INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 79

A RESOLUTION FOR AN INVESTIGATION OF CERTAIN CHARGES CONCERNING THE ADMINISTRATION OF INDUSTRIAL CODES BY THE NATIONAL RECOVERY ADMINISTRATION

PART 1

MARCH 7, 8, 11, 12, AND 13, 1935

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INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

THURSDAY, MARCH 7, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to call at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Connally, Gore, Costigan, Clark, Byrd, Lonergan, Black, Gerry, Guffey, Couzens, Keyes, La Follette, Metcalf, Hastings, and Capper. Also present: Senator Gerald P. Nye; Mr. Blackwell Smith, acting general counsel, N. R. A.; Mr. Leon Henderson, economic adviser, N. R. A.

The CHAIRMAN. The committee will come to order.

You may proceed, Mr. Richberg. For the benefit of the record, just give your full name and your connection with the National Industrial Recovery Act. I presume that you prefer to make a general statement before the members of the committee ask you any questions?

Mr. RICHBERG. Yes; if you please.

STATEMENT OF DONALD R. RICHBERG

Mr. RICHBERG. My name is Donald R. Richberg, Executive Director, National Emergency Council, Director of Industrial Emergency Committee in charge of formulating general policies of N. R. A., and general counsel for N. R. A. on leave of absence.

Senator COUZENS. May I ask you before you begin, Mr. Richberg, whether you have had any industrial experience?

Mr. RICHBERG. Senator, I have had nothing of what you would call an industrial experience in the way of managing any plant operation or industrial operations.

Senator COUZENS. Have you been connected in any way with any sort of activity which comes under the jurisdiction of the N. R. A.?

Mr. RICHBERG. Not for many years.

Senator COUZENS. How far back?

Mr. RICHBERG. All I am thinking of, Senator, is that in general private practice I have represented various employees and various industrial groups many years ago, and that prior to my connection with N. R. A. I had represented, not on retainer but as an incident to private practice, various labor organizations, but primarily those engaged in railroad employment, which has not come under the jurisdiction of N. R. A.

Senator COUZENS. You have appeared many times on behalf of the railroad brotherhoods before the Interstate Commerce Commission, have you not?

Mr. RICHBERG. Many times.

The CHAIRMAN. Mr. Richberg, we are here for two purposes. The first is to investigate various charges that are brought in Senate Resolution 79 which the Senate has directed this committee to investigate. You are familiar with this resolution?

Mr. RICHBERG. Yes.

The CHAIRMAN. You have studied this resolution?

Mr. RICHBERG. Yes.

The CHAIRMAN. And secondly, the committee has before it the message of the President of the United States with reference to certain changes in the National Industrial Recovey Act. So we want to take both along as we go in this investigation.

The Senate resolution and President Roosevelt's message are as follows:

[S. Res. 79, 74th Cong., 1st sess.]

RESOLUTION

Whereas the National Industrial Recovery Act, as a temporary measure, has been in operation for nearly two years, and will expire by limitation of time on June 16, 1935; and

Whereas proposals will soon be pending before the Congress for an extension of the Act or for the enactment of new legislation in lieu of it; and

Whereas the Congress should be guided in its deliberations by the practical experience of the last two years; and

Whereas numerous charges have been made of injustice, oppression, and favoritism in the administration of the codes of the several industries; and

Whereas the charges include, among others, the following:

1. That small enterprises are oppressed and their continued existence jeopardized;

2. That wage scales and the rights of the workers are being ignored or subordinated in the competitive battle of the strong to seize the markets of the weak;

3. That in some industries the code authorities are dominated by certain elements of the industry, and are using their powers for the oppression of other elements;

4. That they are energetically using their usurped powers to accomplish the centralization of industry and to prevent its decentralization;

5. That hordes of paid investigators and inquisitors travel over the country practicing unlawful searches and seizures;

6. That in certain cases the administrators themselves have not hesitated openly to suspend or revoke the law for the benefit of favored individuals;

7. That even among the nonfavored elements of industry there is discrimination in this respect; that the strong are able to resist aggression while the weak must submit;

8. That possessing vast and extra-legal powers, code authorities have made trivial demands which cannot be ignored, under pain of economic death, and have compelled the accused to travel vast distances with their witnesses and records to remote places to vindicate themselves;

9. That under the pretense of enforcing wage provisions the code authorities and the administrators have declared and are putting into effect a policy of regulating production costs without reference to wage scales;

10. That by means of the usurped power of fixing production costs they are indirectly fixing prices to the consumer;

11. That code authorities have usurped the legislative function and have issued floods of new legislation under the guise of rules, regulations, and interpretations;

12. That such rules, regulations, and interpretations are deliberately designed to affect adversely the unfavored elements and to leave unaffected the favored elements of industry;

13. That the torrent of rules, regulations, and interpretations has been deliberately designed to be vague, indefinite, and uncertain in order that the codes may

mean anything or nothing in the unlimited discretion and untrammeled will of the code authorities;

14. That many of these vague rules, regulations, and interpretations have been retroactive in character; that industry has been compelled to guess at its peril; and individuals have been charged with serious offenses for violation of supposed laws which were not and could not have been anticipated;

15. That a wealth of statistical information is obtained from members of industry for the use and guidance of code authorities; that this information is available to the dominant elements and is withheld from those who would resist their domionation;

16. That, protected by code provisions for the confidential nature of information thus obtained, the operations of the code authorities are shrouded in mystery which the unfavored elements are unable to penetrate;

17. That in certain instances important amendments to codes have been obtained and approved of which the industry at large was in total ignorance for many months;

18. That when just complaints have been made to the administration, the administrators have investigated the conduct of themselves and of their collaborating code authorities; that such investigations have been secretly conducted, and the complaining elements never called upon to produce evidence, or informed that the investigation was in progress;

19. That section 4 (b) of the National Industrial Recovery Act (now expired by limitation) provided the conditions under which the President may require that no person shall engage in any trade or industry without first obtaining a license; that in defiance of the clear intent of the Act certain industrial codes provide that all commodities produced shall bear an NRA label; that the privilege of using such label shall be granted upon application to the code authority; the the privilege of using such label may be withdrawn in respect of any manufacturer whose operations, after hearing by the code authority and review by the administrator, shall be found to be in substantial violation of the code; that this in effect constitutes the code authority and the administrator a licensing authority; that some retail codes contain an absolute prohibition of the sale by any merchant of any commodity the code of whose industry requires a label, unless the label of such industry be thereto affixed; that this system of legalized boycott places the manufacturer at the absolute mercy of the code authority and the administrator; that a standardized practice has evolved under which a person aggrieved by a ruling of the code authority may appeal to the administrator for redress, but that as a condition of obtaining a hearing of his grievances, he must agree in advance to be bound by the decision of the administrator and waive his right to resort to the judicial process;

20. That, notwithstanding the provisions of the Constitution of the United States that all bills for raising revenue shall originate in the House of Representatives, code authorities have assumed and are exercising the power to levy taxes on industries and are enforcing collection thereof by duress;

21. That Code authority administration in many cases has lost all semblance of a rule of law and has become a rule of men, bent upon the oppression of their weaker competitors; and

Whereas, if the conditions charged obtain to any considerable extent, the Congress should have full knowledge of them to guide it in the formulation of new legislation; and

Whereas all friends of labor and all well-wishers for the success of the Industrial Recovery program recognize that the correction of abuses is a necessary condition to the success of the program: Now, therefore, be it

Resolved, That the subject matter of this resolution be referred to the Senate Committee on Finance and that said committee be, and is hereby, authorized and directed to investigate and report upon the subject matter of this resolution.

For the purposes of this resolution the committee is authorized to hold hearings, to sit and act at such times and places during the sessions and recesses of the Congress until the final report is submitted, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to employ such clerical assistants as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed $5,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

[H. Doc. No. 105, 74th Cong., 1st sess.]

To the Congress of the United States:

On May 17, 1933, I asked the Congress to "provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and disastrous overproduction."

The National Industrial Recovery Act was passed by the Congress in June 1933 and the administrative machinery to carry it into effect was set up during the succeeding month.

It is worth remembering that the purpose of this law challenged the imagination of the American people and received their overwhelming support. Enforcement during the earlier life of the act was not a problem which gave the country concern—for the very good reason that public opinion served as an enforcing agency which potential violators did not dare to oppose. The immediate objective was to check the downward spiral of the great depression and it met this objective and started us on our forward path. It is now clear that in the spring and summer of 1933 many estimates of unemployment in the United States were far too low and we are therefore apt to forget today that the National Industrial Recovery Act was the biggest factor in giving reemployment to approximately 4,000,000 people.

In our progress under the act the age-long curse of child labor has been lifted, the sweatshop outlawed, millions of wage earners have been released from the starvation wages and excessive hours of labor. Under it a great advance has been made in the opportunities and assurances of collective bargaining between employers and employees. Under it the pattern of a new order of industrial relations is definitely taking shape.

Industry as a whole has also made gains. It has been freed, in part at least, from dishonorable competition brought about not only by overworking and underpaying labor but by destructive business practices. We have begun to develop new safeguards for small enterprises; and most important of all, business itself recognizes more clearly than at any previous time in our history the advantages and the obligations of cooperation and self-discipline, and the patriotic need of ending unsound financing and unfair practices of all kinds.

Hand in hand with the improving of labor conditions and of industrial practices we have given representation and consideration to the problems of the consuming public. And it is reasonable to state that with certain inevitable exceptions in the case of individual products there has been less gouging in retail sales and prices than in any similar period of increasing demand and rising markets.

The first codes went into effect in July 1933. Since then approximately 600 have been added. The average age of these codes of fair competition which have been approved—90 percent of the coverable employments were under code—is less than 11 months—a brief time indeed for the definite achievements already made. Only carping critics and those who seek either political advantage or the right again to indulge in unfair practices or exploitation of labor or consumers deliberately seek to quarrel over the obvious fact that a great code of law, of order, and of decent business cannot be created in a day or a year.

We must rightly move to correct some things done or left undone. We must work out the coordination of every code with every other code. We must simplify procedure. We must continue to obtain current information as to the working out of code processes. We must constantly improve a personnel which, of necessity, was hastily assembled but which has given loyal and unselfish service to the Government of the country. We must check and clarify such provisions in the various codes as are puzzling to those operating under them. We must make more and more definite the responsibilities of all of the parties concerned.

This act, which met in its principles with such universal public approval and under which such great general gains have been made, will terminate on June 16, next. The fundamental purposes and principles of the act are sound. To abandon them is unthinkable. It would spell the return of industrial and labor chaos.

I therefore recommend to the Congress that the National Industrial Recovery Act be extended for a period of 2 years.

I recommend that the policy and standards for the administration of the act should be further defined in order to clarify the legislative purpose and to guide the execution of the law, thus profiting by what we have already learned.

Voluntary submission of codes should be encouraged but, at the same time, if an industry fails voluntarily to agree within itself, unquestioned power must

rest in the Government to establish in any event certain minimum standards of fair competition in commercial practices and, especially, adequate standards in labor relations. For example, child labor must not be allowed to return; the fixing of minimum wages and maximum hours is practical and necessary.

The rights of employees freely to organize for the purpose of collective bargaining should be fully protected.

The fundamental principles of the antitrust laws should be more adequately applied. Monopolies and private price fixing within industries must not be allowed nor condoned. "No monopoly should be private." But I submit that in the case of certain natural resources, such as coal, oil, and gas, the people of the United States need Government supervision over these resources devised for the purpose of eliminating their waste and of controlling their output and stabilizing employment in them, to the end that the public will be protected and that ruinous price cutting and inordinate profits will both be denied.

We must continue to recognize that incorrigible minorities within an industry, or in the whole field of trade and industry, should not be allowed to write the rules of unfair play and compel all others to compete upon their low level. We must make certain that the privilege of cooperating to prevent unfair competition will not be transformed into a license to strangle fair competition under the apparent sanction of the law. Small enterprises especially should be given added protection against discrimination and oppression.

In the development of this legislation I call your attention to the obvious fact that the way to enforce laws, codes, and regulations relating to industrial practices is not to seek to put people in jail. We need other and more effective means for the immediate stopping of practices by any individual or by any corporation which are contrary to these principles.

Detailed recommendations along the lines which I have indicated have been made to me by various departments and agencies charged with the execution of the present law. These are available for the consideration of the Congress, and although not furnishing anything like a precise and finished draft of legislation, they may be helpful to you in your deliberations.

Let me urge upon the Congress the necessity for an extension of the present act. The progress we have been able to make has shown us the vast scope of the problems in our industrial life. We need a certain degree of flexibility and of specialized treatment, for our knowledge of the processes and the necessities of this life are still incomplete. By your action you will sustain and hasten the process of industrial recovery which we are now experiencing: you will lighten the burdens of unemployment and economic insecurity.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *February 20, 1935.*

Is it your wish that you may make a preliminary statement before questions shall be asked you?

Mr. RICHBERG. I believe, Mr. Chairman, it will be helpful if you will permit me to make a limited statement of that character, because I should like to indicate a number of points in a comprehensive way or rather in an outline method, and then subject myself to questions of the committee. As a part of the statement which I should like to make, I desire to show the basis for certain suggestions as to revisions of the present act, and therefore it would be most helpful if I could be permitted to outline the basis for these suggestions, and then make the suggestions as a single statement.

The CHAIRMAN. The committee will abide by your wishes in that respect. You may proceed.

Mr. RICHBERG. As the basis of suggestions for the extension and revision of title I of the National Industrial Recovery Act, a brief statement should first be made concerning the purposes of the act and the difficulties encountered in its administration.

The industrial recovery program was designed to bring about the reemployment of idle workers, the improvement of business and labor conditions, the elimination of unfair competition, both in the employment of labor and in business practices, and the promotion of coopera-

tive action within trades and industries and between management and labor, which would remove burdens and restraints upon interstate commerce.

Two of the destructive forces causing and prolonging the depression were the excesses of cut-throat competition and monopolistic restraints upon competition. On the one hand, under ruthless competition, costs were cut by working labor long hours at inadequate wages, and by substituting machine power for man power, whereby prices were reduced to unprofitable levels and the purchasing power of industrial labor became insufficient to support a decent standard of living. On the other hand, where monopolistic combinations were made effective, high prices were maintained notwithstanding lower labor costs and reduced purchasing power.

To attack both these evils it was necessary to provide for industrial cooperation in order to stop cut-throat competition, improve labor conditions, increase employment and purchasing power; and at the same time necessary to prevent such cooperative mechanisms from being used to strengthen monopolistic controls and to oppress small enterprises.

The difficulties encountered in carrying out the purposes of the industrial recovery program have been legal obstacles to an extent not generally realized. The practical difficulties of organizing trade and industry and in securing the cooperation of all concerned have been monumental. But in the solution of every problem the legal obstacles to effective governmental action have provided the chief hazard.

I want to emphasize this so strongly because most of the criticisms of N. R. A. have come either from omissions to do things which were legally impossible, or the doing of things which were claimed to be illegal.

The principal question presented today is not what is desirable, but what can be legally accomplished. There is little disagreement among well-informed persons as to the desirability of eliminating all forms of unfair competition in business or labor conditions. But the problem now before the Congress is primarily this: In what manner and how far can the authority of the Federal Government be exerted to accomplish these ends?

Title I of the National Industrial Recovery Act did not in terms define fair competition, fix minimum wages and maximum hours, and provide for Federal enforcement of these requirements, for at least two reasons:

1. The detailed requirements of such a statute would require a volume of rules which would be so hampering to business, in their inflexible regulation of a multitude of enterprises operating under varying social, economic, and geographical conditions, as to be impractical, unworkable, and unjust.

2. The legal obstacles to the enforcement of such a statute would be practically insurmountable.

For these among other reasons the Congress provided a flexible system of largely voluntary codes of fair competition to be adopted by each trade and industry under the sanction and supervision of the Government. By this means it was thought that a code of laws could be gradually developed which could eventually be made a part of the law of the land, obtaining the support of the vast majority of those affected, which could eventually be made a part of the law of the land,

just as the customs and usages of the merchants eventually were accepted as the "law merchant", and as the common law developed out of long accepted habits and customs. And I speak now particularly of those who wish sweeping Federal laws enacted to enforce the standards they believe in.

Those who have not recognized the necessity for such a gradual development of industrial law do not understand that the validity of a large part of our law depends upon the support of public opinion. When the Supreme Court is called upon to answer the question: Is this law a reasonable exercise of a power clearly conferred, it is not the individual opinion of a single judge, but the preponderant public opinion, which should be decisive.

The power of the Federal Government to regulate interstate and foreign commerce is explicitly granted. This includes not only the power to regulate transportation and commerce between the States, but the power to regulate those activities within a State which necessarily restrain, destroy, or otherwise substantially interfere with and affect interstate commerce. How can we determine the extent to which unfair competitive practices in the various trades and industries detrimentally affect interstate commerce? In case after case the Supreme Court has made it clear that the determination of the validity of a regulation of interstate commerce must rest upon the factual situation and the reasonable conclusion drawn from the facts by those having practical intimate knowledge of them.

I want to emphasize the implication in Senator Couzens' opening question, and that is that those who have not had practical and intimate experience with the problems of business are frequently unable to judge at all of the practical necessity of the situation and the practical implications of the regulations and their effect.

The Members of Congress, the Federal judges, did not know for example—and I think is a rather dramatic example—of the destructive effects upon interstate commerce of alternative price cutting and wage cutting in the bituminous coal industry. They might have assumed that associations to stabilize prices would necessarily be monopolies in restraint of trade. But when producers in that industry organized themselves to stabilize prices and the Supreme Court of the United States found that these groups must still meet effective competition in an open market and could not dominate prices, the Court held that such associations were not combinations in restraint of trade. Yet all the information available as to the bituminous coal industry prior to the formulation and adoption of its code of fair competition did not furnish the complete and convincing evidence of actual conditions, and the necessity for cooperative action under Government supervision, that developed in the administration of the present law.

I turn aside simply to point out that in the formulation of the codes, notwithstanding the existence of exhaustive statistics in this industry, and inquiries extending over years and years, the men most intimately connected with the industry did not know some of the most fundamental facts in that industry; they did not even know the wages being paid by their competitors; they did not even know the prices being charged by their competitors. As a matter of fact, the most fundamental facts in the industry were more or less shrouded in the mystery of secret competitive factors.

What has been said about the bituminous coal industry applies substantially to every other codified trade or industry. We cannot adequately know or deal with the needs for industrial cooperation until we enjoy the actual experience of bringing about and maintaining such cooperation. We cannot have a sound basis for a judicial determination of the necessity for, and validity of, Federal authority in the regulation of interstate commerce until we ascertain by practical experience what activities are a part of, or substantially affect, interstate commerce. That is wholly a question of fact.

In the same manner the question of what activities restrain trade and restrict fair competition, and what activities increase trade and promote fair competition, is wholly a question of fact; and a sound judicial determination must be based upon exact and comprehensive information regarding the facts.

One of the most illuminating experiences of the whole industrial recovery administration has been an uncovering of the fact that trade after trade and industry after industry in this country has not had in its possession the fundamental facts which any man endeavoring to operate in such trade and industry should have in his possession and more than that, has not access to the information which was substantially essential to an intelligent operation of these businesses.

When the National Recovery Administration entered upon the process of formulating and approving codes of fair competition, it found itself engaged in a field of bitter controversy, not only as to economic theories and conclusions of fact and law, but as to the facts themselves. There was only one practical method of action and that was under the safeguards of public supervision to permit those who were truly representative of a trade or industry to attempt the solution of their problems along the lines which in the light of practical experience and intimate knowledge they believed would promote an improvement of existing conditions.

A different set of facts and opinions developed in the formulating of practically every code. And there are over 600 of these codes. "You must understand the peculiar conditions of this industry" was a phrase so regularly repeated as to become a standing jest in the N. R. A. But, in truth, every trade and industry had its "peculiar conditions"; and it became evident early in the history of the N. R. A. that these must be reckoned with and that it would be a long search to find underlying principles and broad generalizations which could be applied to the determination of all trade and industrial problems.

The codes of fair competition, therefore, present many inconsistencies and conflicts of theory. They have involved the trial of cooperative activities which in some instances have been highly beneficial and in some instances distinctly detrimental to the interests of either management or labor, or the consumer, or the general public. The same type of provision which in some instances will encourage and protect small enterprises and promote competition may, in other instances, tend to monopoly and the restraining of fair competition.

No man, or group of men, could have possessed the wisdom to avoid mistakes and errors of judgment. But the work of the last 2 years has been of incalculable value in developing understanding and exact knowledge of how to promote and to protect the interests of management, labor and consumers and the general public interest in trade and industrial operations. In this same period has been de-

veloped the basis for determining wisely to what extent the Federal authority should be and can be validly exercised to promote fair competition, to restrain unfair competition, to improve conditions of labor and, in general, to advance the general welfare through its power to regulate interstate and foreign commerce.

In a word—and may I say in all earnestness—the basis has been laid, not only for intelligent legislation and administration, but also and of equal importance, for judicial understanding of the necessity for and validity of extensions in the exercise of the power to regulate commerce.

Our legislative, administrative, and judicial efforts to enforce the principles of the antitrust laws have been a deceitful failure and a continuing public injury for 45 years.

I say it has been a deceitful failure because it has always held out to the American people, to the American consumer, protection from combinations in restraint of trade and combinations to fix artificial prices, and as a matter of fact very little of such protection has ever been given to the consumer, while at the same time there have been put upon necessary cooperation in business, artificial brakes to prevent as a matter of fact the best interests of all concerned, of the producer, labor, and the consumer, from being carried forward by cooperative action. For the first time we have acquired the ability now to give an honest protection to workers and consumers against the abuses of economic power. It would be well to preserve this new found ability and to use it effectively.

Whether the particular belief of an individual is in a more rigid enforcement of the antitrust laws or in a more lax interpretation, or what the particular slant is toward the industrial process, the point which I am making is that any effective action must depend upon adequate information and ability to deal with the situation, and in the procedure which has been developed under the codes of fair competition, we have for the first time after these 43 years of failure of the antitrust laws the opportunity to obtain adequate information in order to know how to act to accomplish any beneficent purpose.

It has been evident that in the administration of the N. R. A. many individuals have suffered hardships or injustices, either as the inevitable result of any limitation upon freedom to advance self-interest or through mistakes or improprieties of administration. Complaints against the N. R. A., which must be considered in any revision of the law or its administration, may be classified in the following groups:

1. Complaints of nonenforcement.
2. Complaints of individual hardship and injustice.
3. Complaints of monopolistic practices and oppression of small enterprises.
4. Complaints of injury to consumers.
5. Complaints of management and labor against each other and against the N. R. A.

There is a mass of material available to anyone seeking information on all these subjects. The primary need for a fair appraisal of the N. R. A. is not the production of a new kaleidoscope of fragmentary information, but the study and analysis of the mountains of organized information now available.

Senator GORE. Could you attach to your statement, Mr. Richberg, a list of some of these compilations and digests?

Mr. RICHBERG. I shall be very glad to furnish a sort of bibliography Senator, if you wish. It will be a very extraordinarily long list.

Senator GORE. I did not mean that, but the more essential ones which contain the essence.

Mr. RICHBERG. May I point out that in the submission of every code there has been presented a report of the National Recovery Administration, which report has attached to it, the reports of the Industrial Advisory Board, the Labor Advisory Board, the Consumers' Advisory Board, and a report of the various issues raised, the testimony taken and a summary of those facts. That is found in every single code.

Senator GORE. Your statement indicated that those had been in a way epitomized.

Mr. RICHBERG. Yes. In addition to that, Senator, both by the N. R. A. itself for various purposes has been presented and analyzed a mass of this material. For example, in the price hearings which were held recently by the N. R. A., a volume is prepared entitled "Prices and Price Provisions in Codes", which is available to anyone who desires to see it. In the wages and hours hearings, the labor hearings another large volume was prepared entitled "Hours, Wages, and Employment Under the Codes", which summarizes a mass of that material.

In addition to these documents from N. R. A. which also include, I should say, a recent report summarizing all of the activities of N. R. A. in a very brief space, in addition to these there are a mass of documents that have been issued by various private and disinterested groups of economists and others, to which I could make reference if you were interested in that form. I will be very glad to furnish that material.

The compiled history of every code shows all the facts and arguments presented in behalf of every conceivable interest; and much of this material has been summarized in voluminous reports made by the N. R. A., by interested parties, and by outside disinterested observers. At this time, therefore, I shall only offer these records and the assistance of all the members of the National Recovery Administration to the committee, with the assurance that practically every substantial criticism which may be offered has already been made and in most instances acted upon by the N. R. A.; and the records are all available for your inspection.

It is, however, fair to state that, with codes covering substantially 90 percent of their possible coverage, with hundreds of thousands of separate enterprises and over twenty million employees affected, the comparatively small volume of complaints and the record of their disposition will show that any sweeping indictment of the N. R. A. as a "failure", or as having operated contrary to the public interest, cannot be sustained.

Referring briefly to the five classes of criticism, let me summarize the facts.

1. Complaints of nonenforcement: Considering the millions of employees affected, it is evident that the labor provisions of the codes have been generally complied with. This does not include a continuing dispute in certain industries over the enforcement of rights of

collective bargaining. I speak of all the other labor provisions which have been almost universally maintained. Labor complaints rose to a peak of nearly 18,000 on hand last September, prior to the reorganization of the N. R. A., and fell to 14,361 by the end of December. It is also a fact that since last September the number of labor complaints received and closed have steadily declined and have been about equal in number.

Out of those on hand December 22, 1934, 7,170, almost half, occurred in only 10 codes, and 4,904, about one-third, in only 5 codes.

When you realize the proportion of these complaints comprised within a few codes out of over 600, it should be realized that the noise of the complaints has nothing to do with the amount of satisfaction, which is, of course, silent.

Senator GORE. Do you list those codes?

Mr. RICHBERG. Yes, Senator; I can give you a list of those codes. Half of the complaints occurred in 10 codes, and 4.904, or one-third, in 5 codes; and the 5 codes are the Restaurant, Retail Food and Grocery, Trucking, Baking, and Motor-Vehicle Retail codes. The curious thing is that when we come to the trade-practice complaints, they allocate in a similar way to a few codes and almost a similar group of codes. I will point that out.

Complaints regarding trade-practice provisions reached a peak of about 3,500 on hand in the middle of August 1934 and has since declined to 2,875 on hand December 22, 1934. Since September about the same number of complaints have been received as have been closed. Ten codes accounted for 1,160, or 40 percent of the total, and 5 codes for 25 percent of the total.

And those five codes are trucking, which was in the labor complaints; retail solid fuel; retail monument; retail food and grocery, which was among the labor group; and the baking code, which was also among the labor group.

In other words, a few of the codes have accounted for the major volume of complaints in regard to both labor provisions and trade-practice provisions. Of course, several thousand complaints a week may look as though something were wrong, until it is realized that the local, State, and Federal courts receive every week many more thousands of complaints of wrongdoing in commercial transactions, and that thousands of complaints of individual hardship, injustice, and violations of rules would be inevitable under any system of industrial law and order.

2. Complaints of individual hardship and injustice: The enforcement of long-accepted rules written in regulatory statutes produces thousands of complaints in the regular courts every day, as just pointed out.

And, Senators, will you realize that this is a question of the substantial regulation of 90 percent, we will say, of American trade and industry; and it is utterly inconceivable that you could establish any system operated by human beings and putting restraints on human action that would not give rise to a vast volume of complaints and a great many well-founded charges of injustice or hardship on individuals, and incidentally of wrongdoing, in such a mass of administration.

Senator WALSH. Is the amount of business being regulated 90 percent?

Mr. RICHBERG. Not in that sense; but in this sense, that 90 percent of the possible coverage of N. R. A. as the industries have been classified according to the employment is now under codification.

Senator WALSH. What percentage of American business is actually being regulated under the N. R. A.?

Mr. RICHBERG. I can give it to you, perhaps, along this line, that the codified industries now cover employment of about 22,000,000 employees. What number can be employed in industry is, of course, one of our subjects of hottest debate; but it is fair to take this basis, that there were approximately 28,000,000 employed in industrial occupations, eliminating agriculture and professional and domestic aervices, in 1929. If you have at the present time a coverage of spproximately 22,000,000, and you eliminate from the jurisdiction of the N. R. A. those localized employments which cannot properly come within any definition of it, I think we are fair in our assumption that approximately 90 percent of the possible coverage is covered.

Senator WALSH. So you are actually regulating the hours of labor and the wages of approximately 22,000,000 of American employees?

Mr. RICHBERG. That would be true if the codes were effective. As a matter of fact, some of the codes, let us say very frankly, at the present time are not being well complied with and are not being effective; and it is in those groups of employees who might total about possibly 3,000,000, that regulation is very ineffective at the present time.

Necessarily the effort to establish industrial codes would produce many cases of individual injury. But provision has been made from the beginning for the consideration of such cases, and over 1,171 exemptions from the operation of specified code provisions have been granted. Furthermore, 680 code amendments have been approved, modifying more than 2,000 separate code provisions; 614 general stays or temporary exemptions from code provisions have been put in effect to permit further study. Thus, every effort has been made to meet complaints and to rectify mistakes of judgment. Not that the effort has been wholly successful but that the effort has been made.

The process has been one of constant improvement and better understanding and the gaining of experience in the administration and among business men.

3. Complaints of monopolistic practices and oppression of small enterprises.

Senator WALSH. Can you give us an illustration of any industry that practiced its monopolistic activities, for the purpose of crushing small enterprises, before N. R. A?

Mr. RICHBERG. It is very difficult for me to give you an instance of any large industry that did not.

Senator WALSH. So it was general?

Mr. RICHBERG. I would say it was quite general in the large industries. It does not necessarily mean that every industry was operated by a particular association or combination in restraint of trade, but those activities which are regarded as monopolistic practices and as tending to monopoly were in full force and effect in practically all the large industries; and the result was a continuing decrease of small enterprises throughout the industrial trade field, which has been very definitely stopped up since the N. R. A. began operations, which is evident on the records. The facts regarding that cannot be denied. The protection of small enterprises, on the whole, is clear.

Senator WALSH. I can understand that cutthroat competition was the background of the movement for the N. R. A., which was practiced in general business, but I had an impression that the larger industries, where union labor prevailed and where the standards of living were somewhat higher than the others, were the sufferers from the cutthroat competition of the smaller industries where their labor was not organized and where the wages were actually moved down.

Mr. RICHBERG. I think there is no question, Senator, that they were all the sufferers, but looking to the result, you can say that this is a monopolistic tendency. I will give you an example of a very vigorous complaint in the rubber-tire industry, that of the operations of one of the large companies which, having lost 17 millions one year, then the next year, when the prices of everything which went into the tires were raised, reduced its prices still further, meeting the opposition of the rest of the industry on the ground that it was driving them into bankruptcy. The inevitable result of such operation—I am not putting the label of monopoly on that proposition—it might be an exercise of bad business judgment, but the inevitable result actually taking place in the industry was the steady elimination of the smaller enterprises and the inevitable result of concentrating in large corporations, and that tendency had been going on.

Senator WALSH. I was under the impression that the cutthroat competition was in the industries where the employees were not organized and did not belong to unions and could not fight the battle to keep their wages up.

Mr. RICHBERG. The great difficulty, Senator, is the organization of labor was very limited or practically ineffective in so many of our large industries that the group which you have remaining is enormous compared to the group that was organized.

Senator WALSH. Excuse me for the interruption.

Mr. RICHBERG. Thank you, Senator.

The general proposition that the effect of the codes upon small enterprises has been harmful cannot be sustained. The steady decline of business failures, particularly among small concerns, since the beginning of N. R. A. is a complete refutation of this charge. The number of business failures in January 1934 and January 1935 is far below the number recorded in every year since 1920.

I have brought a chart, because this is one of the few charts that I find can show very effectively a situation illustrating that, and I should like to point out that there [indicating] is the record of business failures; and from 1921 onward through the entire period of the so-called "prosperity and expansion", business failures rose; and that in 1934 and 1935, for the first time, they have gone down below the level of 1921, which, as a matter of fact, is a complete showing of the fact that the effect of the N. R. A.—because that is the only essential responsible feature for that particular figure—I should say, rather, that is the most responsible feature—that the effect of the N. R. A. in its operations has been very clearly to protect the smaller enterprises and to protect business as a whole from those dislocating disturbances which produce insolvencies, particularly in the enterprises not adequately financially backed, so as to be able to stand such operation.

The CHAIRMAN. I wish you would leave that chart with the clerk of the committee.

Mr. RICHBERG. I will be very glad to.

It may be true that under some codes small enterprises have continued to suffer from disadvantages under which they have suffered for many years. But it is also true that the detailed record of code after code shows that new protections have been extended to small enterprises and in many instances the major purpose and effect of code provisions have been to protect the smaller enterprises against their larger competitors. This is particularly true of many price protection provisions which have prevented large corporations from using the most potent weapon of monopoly—destructive price cutting which will wipe out small competitors.

May I turn aside just for a moment to point out the complete inconsistency of a position commonly taken; first, that all price control is monopolistic; and the second position, which is a fact well proved in our history, which is that the chief weapon of monopoly is destructive price cutting. Those two things, the charge and the fact, simply cannot go side by side. It is perfectly true that when a monopoly is established or a monopolistic combination can be put into effect, its object is usually the maintenance of an artificial price. That is correct. But when you endeavor, as has been done in the codes over and over again, to prevent destructive price cutting by putting a floor on prices, as a matter of fact you are opposing the most efficient, effective, and universal weapon of monopoly, which is price cutting. There is not a monopoly in this country, outside of one based on some natural resource or artificial protection that has not been built up on the basis of destructive price cutting, and the universal complaint which we encountered in the early days of the N. R. A. against the operation of large concerns was in the destruction of prices.

Another point of inconsistency: Those who are most vocal in complaining against the rise in prices under the N. R. A. are at the same time opposing the very usefulness of the N. R. A. in preventing the unfair control of prices through the domination of the market by a few strong concerns, after they have driven all of their competitors to the wall by destructive price cutting. The question simply is this, as to whether we shall continue to carry on a sham battle of 45 years against monopoly and monopolistic prices or whether we shall use a new and effective weapon which has been found and proven, and make it more useful and actually do something to prevent monopolistic combinations from driving small enterprises to the wall.

That is the actual record in N. R. A.—the protection in industry and industry, and trade after trade, including the vast retail trades, the protection of the small enterprises. That is the universal report to N. R. A. from these industries. That is the vote of these industries by huge volumes of those engaged in them, and the question is whether we will continue actually to protect those small enterprises who are asking protection or whether we will go back to our former ineptitude and inefficiency in endeavoring to enforce artificially the antitrust laws in such a manner that under them all combinations could thrive and flourish, and destructive competition of every character could break down wage standards and destroy the general level of American living.

It is true that under some codes these enterprises have suffered, but it is not true that the major effects of the codes have been injurious to small private enterprise.

Senator COUZENS. Can you give us some cases where those exceptions rule? I think that is opportune at this time.

Mr. RICHBERG. You mean where the codes have been harmful to private enterprise?

Senator COUZENS. Yes.

Mr. RICHBERG. To be perfectly candid, Senator, I will have to ask someone else to present that, because in my own knowledge I have not a case where a code by the code itself has been harmful to the small enterprise. I know cases where in trade and industry, small enterprises are still suffering, but not by virtue of any action permitted or authorized in the codes.

Senator COUZENS. But rather due to the lack of enforcement, perhaps?

Mr. RICHBERG. Possibly in some instances that is true. In most instances, because of the continuance of practices which existed long before the codes were established.

My attention is called to this, and it is quite true, Senator, that in many instances the establishment of decent standards of wages and hours have driven a mass of small enterprises to the wall, and that is the sweat-shop type of competition which is breaking down all decent wage conditions. The sweat-shop operator is the main complainant against the N. R. A. That is a simple fact. It is not an emotional statement. The man who insists on breaking down wage standards, who has never been willing to maintain a decent standard of wages, is the persistent and perennial complainant against N. R. A., and he practically always represents himself, and that is the only thing that is honest in the representation, that he is a small enterprise.

4. Complaints of injury to consumers: The question of the effect upon consumers of the codes is one concerning which there may be endless argument. The best brief answer is to quote from the statement of an eminent authority, Dr. Frederick C. Mills of the National Bureau of Economic Research—one of the outstanding economists and statisticians in this field, who, having made a very exhaustive review of the price structure from February 1933 down to October 1934, arrived at these conclusions, which are well worthy of your attention although they are expressed, I might say, in two dollar words rather than in reasonably simple language:

> We must conclude from the record that the price movements of the 20 months from February 1933 to October 1934 have been salutary. Price cleavages have been reduced. The high real values of building materials and of goods for capital equipment have been somewhat lowered. * * * Important obstacles to the renewal of physical activity in the production and distribution of goods have been removed and others have been reduced. Price and production factors have combined to increase gross income for producers of raw minerals, for manufacturing producers, and for construction industries. * * * Movements to October 1934 have been irregular, but the net changes have worked toward higher real purchasing power of consumer groups and lower real costs of fabrication and of capital construction. * * * Ameliorative tendencies have been at work in the complicated structure of prices.

I want to recommend that to your consideration.

Senator GORE. Where did he say that?

Mr. RICHBERG. It is in the report from the National Bureau of Economic Research of December 1934. We can furnish the entire report.

5. Complaints of management and labor against each other and against the N. R. A.: The great difficulty encountered by N. R. A.

in the field of labor relations has resulted from the absence of an adequate organization of labor in the United States. The major issues regarding terms and conditions of employment should be settled by collective bargaining between employers and employees. In a trade or industry where employers and employees are both adequately organized there should be no great difficulty in establishing minimum requirements for labor conditions. But the effort of labor organizations to extend their memberships—an entirely appropriate and proper effort—coincident with employer opposition, has created a situation which is largely not one of negotiation, but one of conflict. Even though there may be much criticism of the formation of so-called "company unions", which is particularly justified when they are company controlled and not truly representative of the workers. Nevertheless the advance toward a more adequate organization of labor under the N. R. A. is an advance toward the establishment of mechanisms to preserve an economic balance between the conflicting interests of employer and employee.

In modern industrial civilization the choice is clearly presented between the protection of the interests of the workers through statutory laws and governmental enforcement, or through organizations of comparable bargaining power established by employers and employees themselves for self-government in industry. The creation and maintenance of independent, self-governing organizations of employees is essential to this process. It is certainly wiser for the Government to help bring about the fixing of hours, wages, and other labor conditions by such processes, than to substitute political action for private bargaining in the regulation of labor conditions.

The strife and unrest which has developed from the provisions of section 7 (a) was a price which had to be paid if we were to make an honest effort to carry forward a program for the self-government of industry and the operation of private enterprises free, so far as possible from political controls. If is still worthwhile to seek to establish better and more enduring relationships between employers and employees by carrying forward this program, rather than to accept the alternative of a class struggle for political domination.

It certainly must be apparent to the Members of the Congress that that is exactly the choice which is year by year being more steadily presented to the Government of these United States, and that is either to help bring about that adequate organization of the employees' interests so that there is a fair practical balance and a comparable bargaining power, or else the demand will be irresistibly that the Government itself take over the enforcement of standards, the laying down and the enforcement of such standards, to protect decent labor conditions. If the latter alternative is accepted, the inevitable result is a purely class struggle for control of government, which happily in the history of the United States we have avoided. The way to continue that avoidance is the way marked out in section 7 (a) but it needs the honest cooperation of all concerned, and it needs the continuing support of the Government.

I read the other day an observation upon the entire situation by a distinguished English observer, Sir Arthur Steele Maitland, who spent some time in this country studying this problem, and he pointed out that our grave difficulties in these labor relations were due to the fact that we entered upon this program with no such organization of

labor and no such acceptance of labor's situation in the economic picture as had existed in England for many years, and so we have gone through a struggle which would not exist at all under the English system, a struggle of which over 90 percent has been over the right of organization and collective bargaining whereas the real struggle should be over the terms and the result of collective bargaining, with no question at all of the rights of the parties to engage in it and no question of the desirability from the standpoint of the public interest.

You had a typical crisis of this sort with the Adamson law, when it was passed, where the private instrumentalities fell down, but since that time, with the same organizations, with which I am peculiarly familiar, I want to point out that by their adequate organization with the support and aid of laws passed by the Congress of the United States, the relations between employers and employees on the railroads have been maintained without strife and constant disturbances—have been maintained on the basis of relationship, and tided through the entire period of the depression without a single major conflict. That is a record which can well be commended for other industries, and the basis for it was the adoption of the principles which are now written into 7(a), which were written into the Railway Labor Act of 1926 by this Congress.

Referring to my previous statement as to Dr. Mills' article, I want to state for the record it appears in National Bureau of Economic Research Bulletin No. 53, entitled, "Changes of Prices, Manufacturing Costs, and Industrial Activity, 1929-34."

Senator GORE. Is that bulletin 53?

Mr. RICHBERG. Bulletin 53, Senator, yes. On the basis of the experiences of nearly 2 years of the N. R. A. recommendations have been prepared by representatives of the N. R. A., and other interested departments of Government, for legislation to provide for the extension and revision of the present act. I am going to outline these recommendations, following the general structure of present title I, but without presenting any redrafts of the various sections.

The CHAIRMAN. This embodies the suggestions of the administration with reference to changes in the law?

Mr. RICHBERG. That is correct, Senator. When it comes to details there may be various divisions of opinion as to exactly what provisions and language would be most desirable. I think I can fairly say that there has been a general agreement that revisions along the following lines would strengthen the act and improve its administration.

In this connection I might point out that the President's message to the Congress was written after the formulation of these recommendations and is wholly consistent with the recommendations. If I have in my statement of them used any inept phraseology, that is my mistake. I think the recommendations are fundamentally entirely consistent with the President's message and his recommendations to the Congress.

(1) The policy of Congress to meet the needs of the present emergency and to prevent its recurrence by appropriate regulations of interstate commerce should be more clearly defined; and the administrative activities to accomplish these defined aims should be explicitly authorized. This will serve, not merely to strengthen the exercise of administrative authority, but also to define its limitations.

From the standpoint of recent opinions of the Supreme Court of the United States it becomes clearly evident that it would be helpful in strengthening the administrative authority as a further and explicit definition of standards described in general terms of the present act, and at the same time an explicit statement of those activities which, in the opinion of Congress, are appropriate to carry forward the standards laid down when so defined.

Senator GORE. Has any analysis been made of the decisions of the Supreme Court and the lower courts?

Mr. RICHBERG. Yes.

Senator GORE. As to the limitations that ought to be recognized?

Mr. RICHBERG. We had an extensive and continuing analysis, Senator, of all the decisions made, and it is in the light of such authority that we found there that these recommendations are made. As a matter of fact, from the standpoint of N. R. A., a great many drafts have been made of suggested provisions which would carry out that sort of a purpose.

Senator GORE. I was wondering if there was a brief or a report or a document which comprehends very much all of the decisions, and whether that is available.

Mr. RICHBERG. I would say that is difficult, because the decisions have involved so many different codes and so many different questions. Of course, primarily, the more important decisions have largely been the determination of what is interstate commerce or what affects interstate commerce, and to what extent does Federal authority extend to that, and how well adapted is the code or the regulations involved to the regulation of interstate commerce.

Senator GORE. Two important decisions came down yesterday from the State courts of New York and Wisconson.

Mr. RICHBERG. Yes, I believe so. There was one in New York. I am not familiar with the particular phases of them, except I have a general understanding that they vary considerably and on the standards in the New York Act also.

Senator CLARK. Mr. Richberg, I did not quite understand just what you meant by the Congress being more definite as to standards, and setting out more in detail what is intended to cover. Do you mean by that the types of business?

Mr. RICHBERG. That is one of them, Senator. I think it would be appropriate to have a declaration of Congress as to the types of business to be covered, as to that which, at least in the view of Congress, is regarded as a part of or affecting interstate commerce. That is one of the standards. The question, for example, of the prevention of destructive price-cutting, just to take an example, of something that has been discussed a great deal. If that is an appropriate thing, let it be so stated. If it is not appropriate, if the Congress does not believe in any code provisions to prevent destructive price-cutting, then let that be stated. In other words, so far as the Congress believes the Administration should carry forward the standards for the regulation of interstate commerce, or to remove obstruction, the more definitely they are stated, the more clear, at least, will be the Administrative authority to carry out the will of Congress. Of course, ultimately the question will still remain as to whether the Congress itself has construed the power of Congress correctly in the opinion of the court. That is the grave question that I have spoken of earlier that is faced at every stage of this proceeding.

Senator GORE. In other words, as I understand it, you think that any act drawn should go a little more into detail as to what Congress wants covered in the Administration?

Mr. RICHBERG. And how it should be done.

Senator GORE. For instance, in connection with price-cutting, if Congress also thought that if business was accorded the privilege of maintaining prices, that it should have imposed upon it the burden of restrictive profit. That also should be included in the bill?

Mr. RICHBERG. That also could be included in the bill as such a standard, naturally.

(2) The act should be extended substantially in the present form for 2 years, so as to allow for a further development of administrative procedures and a clarification of the entire problem prior to the enactment of such permanent legislation as may then seem desirable.

(3) The flexible machinery of code formulation and administration should be preserved with the use of such instrumentalities of self-discipline as code authorities permitted, but with express restrictions upon the exercise of any public authority by any private body.

I will merely point out in passing the problem that is met is this, that there has been criticism in some cases justified by the assumption on the part of the code authority, created as a body of private citizens, of the authority to undertake the exercise of discretion under the law. I think it perfectly clear, and the Congress would desire to make it clear, that whereas, you may utilize voluntary committees in aid of self-discipline in carrying out the law economically, you would not wish conferred upon any private body not responsive to public obligations any authority to exercise discretionary power in the interpretation of law, or to lay down rules of law enforcement.

Senator KING. It would be a pretty dangerous thing, would it not, to let the industry, that is, the code authorities formulated by it, determine prices and profits and everything else without restraint, where they would be the judges and the jury to punish and prescribe?

Mr. RICHBERG. I do not think any such authority should ever be permitted, under any circumstances, sir.

Senator KING. You have done that, haven't you, under the present laws?

Mr. RICHBERG. No. As a matter of fact, Senator, not under the authority of the code.

Senator KING. It has been assumed, however, by those administering it?

Mr. RICHBERG. Those administering codes may have, in some instances, exercised, secretly or otherwise, an improper authority. I think I should say this—and I will ask for correction—I believe that under the lumber code the code authority was permitted to establish certain prices and quota. Is that not correct?

Mr. SMITH. Subject to approval.

Mr. RICHBERG. That, however, was subject to the approval of the N. R. A.

Mr. SMITH. That has been changed since then.

Mr. RICHBERG. The difficulties of administrative checking are such that you may have, in fact, in substance, the result of a private determination without public authority. That has been abandoned since, in the lumber code.

Senator KING. The lumber code increased prices almost immediately, did it not, 46 percent?

Mr. RICHBERG. The result of the lumber code was a marked and rapid advance in prices. That is quite correct. Their situation was this, Senator: There had been a very destructive era of price-cutting and unprofitable production in the lumber industry. Under the code, wages were very definitely raised, so it made it impossible for the high-cost operator to operate without some price stabilization. In other words, they could have been simply destroyed by the larger competitor. There was a large demand for stabilization of prices. My own opinion is, that was taken advantage of improperly and that the code administration went too far.

May I also say, to protect my own position in the matter, that I filed a memorandum at the time of the publication of the code, which I have never changed, to the effect that I declined to approve of the legality or the economic soundness of a large number of the provisions of the code.

Senator COSTIGAN. Did they not need your approval?

Mr. RICHBERG. No. I was solely in an advisory capacity, Senator. In fact, everybody was working in an advisory capacity.

Senator BLACK. Who decided it, Mr. Richberg? It must have been somebody who decided it.

Mr. RICHBERG. The Administrator at that time made the ultimate recommendation to the President, and, of course, the President, in practical effect, was forced to rely largely upon the recommendations presented by the Administrator, in such complicated situations, in such pressing forms of problems that were pouring in at that time.

Senator KING. Mr. Richberg, may I ask one question rather generally?

Mr. RICHBERG. Yes.

Senator KING. Had not the code, generally speaking, permitted and fostered open prices, resale price maintenance, price fixing, or compulsory cost systems, floor costs, uniform cost, average cost, uniform contracts, uniform discounts, customer classification, allocation of production, production control, and various other devices tending to suppress all competition between the various members of different groups?

Mr. RICHBERG. Senator, in answer to that rather comprehensive question, all I can say is this, that there has been a steady pressure for cost protection devices of one sort or another under the code. In most instances those have been set in behalf of smaller enterprises. I think it can be honestly said that where they have been employed in most cases they have operated for the benefit of smaller enterprises, but it is also true that the codification process has permitted the utilization of these cost protection devices in one form or another in many instances, to provide for price maintenance rather than price competition, and it is also true that frequently long before the codes were adopted you had quite clearly a control of prices in an industry. That situation has not always been changed under the operations of the codes.

I think this is correct also. There may be a misunderstanding of some of the provisions in the codes, for this reason: The so-called "price provisions" in the codes have been analyzed by a great many persons, as to what the results would be, but our early experiences were so unfortunate with price provisions that a great majority of those provisions have been held up and have never been administra-

tively operated. Outside observers have analyzed codes to show what terrible things had been done under the codes, when, as a matter of fact, the provisions which they had been analyzing had never been made effective, because we found exactly the same type of result that was complained of was likely to happen.

Senator CONNALLY. The code, if enforced, would have done that, would it not?

Mr. RICHBERG. It was found, after a certain number of codes were established and in operation, that certain types of price provisions were liable to misuse, or were directly designed for unwise and undesirable practices, and as the result those were then held up by the N. R. A. and were never allowed to go into effect.

For example, most of the cost-accounting provisions required the approval of the N. R. A. There have been a lot of them submitted to the N. R. A. but never approved, because of the difficulty of approving cost-accounting provisions which would really provide a floor against destructive competition and not offer a mere subterfuge for price fixing. So the actual operation of the codes under N. R. A. in nowise resembles the apparent theoretical provisions that have been written into the codes. It requires, therefore, an analysis not of the whole code structure but of the actual operation under each code to see whether, in fact, there has been any price control or price determination.

Senator CONNALLY. That is a tremendous problem, isn't it, to leave it to the will of the N. R. A., as to whether it will do it or it will not, without any direction of Congress?

Mr. RICHBERG. Senator, that is, frankly, one of the matters which I think is entirely in the scope of what I have referred to as the definition of standards.

Senator CONNALLY. I am not in favor of giving that power to anybody.

Mr. RICHBERG. I doubt the wisdom of that.

Senator CONNALLY. I am not in favor of giving that power to the N. R. A. or any other organization.

Mr. RICHBERG. I think if the Congress desires that some protections should be thrown around some forms of destructive price-cutting, that that can be so stated and so written into the law that the privilege cannot be extended into actual price-fixing, and if I may read a few of these later suggestions you will see I have presented these suggestions along that line, if I might continue with this, Mr. Chairman.

The CHAIRMAN. All right, proceed, Mr. Richberg.

Mr. RICHBERG. (4) A provision should be made for the voluntary submission of codes. But codification should be limited to those trades and industries actually engaged in interstate commerce, or affecting it so substantially that the establishment and enforcement of standards of fair competition therein are necessary for the protection of interstate commerce.

That is merely a suggestion of a provision to be written.

Senator KING. That would eliminate a large number of the codes entirely, would not it?

Mr. RICHBERG. That would depend on the way in which Congress should write the provision. That would probably eliminate the

operation of a large number of codes covering so-called "local" or "service" industries.

Senator KING. Such as restaurants, barber shops, and cleaning establishments?

Mr. RICHBERG. Exactly.

Senator KING. Perhaps 300 or 400 of the codes would be eliminated under the proper interpretation of that suggestion which you made, is that not true?

Mr. RICHBERG. Senator, it might not eliminate numbers of codes so much as it would eliminate the volume of business covered by codes. May I point this out, that a great many of these minor codes are clearly industries engaged in interstate commerce, there is no question about that. They are minor codes, yet they want the benefit of codification. I do not think the Congress would desire to take it away from them.

On the other hand, there are large groups of these industries which cover a great volume of business and which cover large volumes of employees who might well be eliminated by acts of Congress.

The CHAIRMAN. It is a voluntary matter on the part of the industries that want to stay under the code, is not it?

Mr. RICHBERG. The door will still be left open, may I suggest, for the voluntary organization and to get the benefit of agreements. It is still provided, in the present act, in order to promote an improvement of industrial cooperation. And I also want to state to the Senators, that when you meet the exact problem of the relationship of these industries to interstate commerce, it will be found far more complicated than it may appear on offhand observation. There are, as a matter of fact, some of these industries which, in their operations, or in divisions of their operations, profoundly affect interstate commerce operations.

Senator COUZENS. Will you give us an example of that?

Mr. RICHBERG. I will take the oil station as an example. You might regard it as a local service enterprise. As a matter of fact, the oil-filling station is an outlet of a great part of the oil production of the country, just as the Supreme Court held that the stockyards were subject to regulation as the throat through which the current of interstate commerce flowed. So the question should be squarely presented to you as to whether or not that outlet for interstate commerce which, if choked up, will destroy commerce itself and back commerce up, whether that outlet should not be kept clear.

Senator COUZENS. Will you describe how it would choke up the outlet?

Mr. RICHBERG. Yes. I think I will leave that, frankly, to the Petroleum Administration itself, as to the administration of the code, but I could describe it briefly by saying that there is no place where you have had any greater examples of destructive competition and price cutting than in the operation of the large companies and the price wars that have gone on in the sale of gasoline, and, as a practical fact, if you were going to prevent the waste in natural resources, and going to protect an industry in its stability of employment, it is very difficult in the oil industry to stop anywhere, from the well to the automobile itself.

Senator COSTIGAN. Mr. Richberg, have you finished?

Mr. RICHBERG. Yes.

Senator COSTIGAN. Because an agreement is voluntary, is it reasonable for Congress to assume that it is in the public interest?

Mr. RICHBERG. Not at all.

Senator GORE. Mr. Richberg, reverting back for a moment to a previous question that was asked, it seems to me like barber shops have been a glaring instance where there has been no relationship, even imaginary, between the barber business and interstate commerce. Even the fact that the soap had come in through interstate commerce would not change the fundamental character of the business. I just cannot figure that out. I think that confirms your theory or your recommendation, if that is true. You ought to be stopped somewhere.

Mr. RICHBERG. May I answer that, Senator?

Senator GORE. Yes: I want you to.

Mr. RICHBERG. The barber-shop code, as a matter of fact, and that group of codes are practically inoperative, but I want to point out the fundamental reason for bringing such enterprises into the picture of the N. R. A.

In the first place, it is very hard, when you start upon the regulation of a flow of interstate commerce, and the industries and trades which are concerned with it, to say at exactly what point you find you have gone into what is essentially a local enterprise.

The second point is that through the organization of the N. R. A. there has been a great deal of emphasis laid upon the preservation of labor standards and the effect upon interstate commerce of raising labor standards throughout the country. Some of the most degrading conditions of labor exist in the so-called "service" trades and industries, or local trades and industries of that character, and they account for perhaps 3,000,000 employees. Now, under the circumstances it should be perfectly clear that the pressure for some codification and protection of the standard of living of some 3,000,000 workers will be very strong, and every effort has been made to meet that situation.

Senator GORE. If barbers are supposed to be included, if they are said to be in interstate commerce, then a number of other codes could be included?

Mr. RICHBERG. That is quite clear, and I am making my own statement from a legal standpoint very frankly on that.

Senator GORE. Yes.

Mr. RICHBERG. It is quite true that you may expand your concept of power so that theoretically all business in the country is comprehended within it. It is also quite clear you can contract it to an extent to which it would be utterly impossible for the Federal Government to perform its duty in the protection and promotion of interstate commerce, and where the States themselves are totally incapable of meeting the problem.

My own solution, from a legal standpoint and analysis of the appropriate extension of the power of interstate commerce, the valid extension of it and the proper extension in view of the fundamental purposes and principles of our constitutional form of Government, is that you should draw the line at those matters wherein the State itself is incapable of dealing with the problem and the problem must be met in the interest of commerce as a whole. So far as you can find it possible to deal by State legislation with a particular evil, and to

meet it you may very well properly rely upon the State and say this is not a part of what is comprehended within the congressional power of interstate commerce, but when you find the currents of commerce affected by those things which are utterly beyond the power of a single State to control and regulate, then it seems to me you have entered into the domain of not only valid constitutional power, but where there is necessity, to exercise it. That is a rather rough rule, but as near as I can see, it is about the rule which the Supreme Court followed in the great variety of cases.

Senator GORE. The regulation in respect to barber shops grew really not out of any rational limitation of commerce, as you suggested, but out of the view that you express, that there were labor conditions that somebody somewhere wanted to put a stop to, which perhaps, intrinsically, ought to be stopped, but which Congress did not have any power to stop, which was entirely within the purview of State constitutions.

Senator KING. After all, your position is that there may be a power which, if unwisely exercised, would prove detrimental to the public?

Mr. RICHBERG. Yes.

Senator KING. Then the Federal Government may have the power, or somebody may have the power, which might be exercised to the injury of the public as a whole.

Mr. RICHBERG. There are two questions involved. One is the extent of the power, and the other is as to what is the extent of its wise use. I do not think they coincide always.

Now, may I take up the next step of these suggestions?

The CHAIRMAN. You may proceed.

Mr. RICHBERG. (5) In the approval of codes of fair competition, the President should be required to make findings that the standards laid down by the Congress had been met. These standards should include clear and practical definitions and prohibitions of monopolies and monopolistic practices. In the language of the President's message:

> We must make certain that the privilege of cooperating to prevent unfair competition will not be transformed into a license to strangle fair competition under the apparent sanction of the law.

If the Congress will write a definition of what are monopolistic practices and what are those things which tend to monopoly and require findings of fact in the approval of codes in order that they do not contravene those requirements, the Congress will go a long way to meeting the problem which has arisen of the improper utilization of the code structure for monopolistic practices.

Senator GORE. Will not it also define what unfair practices are? An unfair practice may mean one thing to one and may mean another thing to someone else.

Mr. RICHBERG. I think to a considerable extent it may be desirable, Senator, to go back to the year 1914 when I participated in the formulation of what is now the Federal Trade Commission Act. At that time it was found, although rather hesitatingly, by the Congress, that on the whole it would be better to permit a type of law to develop under the phrase "unfair competition" rather than have the Congress itself attempt to define all those things which would constitute unfair competition. Now, the great danger in a law of that kind is that

unfair competition from trade to trade and from industry to industry varies so much in its method that any attempt to define all classifications results in writing something resembling a small encyclopedia. I think we should proceed along that old line before we attempt to definitely write the rules of what is unfair competition. The variance is so great between trades and industries.

Also, we find this, that as soon as you define an unfair competitive practice and prohibit it, then immediately it becomes possible to do precisely the same thing in a slightly different way, and accomplish the same unfair result. That is one of the benefits of not having to define it in the legislative determination.

Senator GORE. Somebody has to define it, either Congress or the person that is administering it.

Mr. RICHBERG. I think that is true.

Senator GORE. You prefer to leave that matter to the administrator to decide?

Mr. RICHBERG. Frankly, I think you must, in good part, for this reason: You cannot define—it has never been found possible to define—just and reasonable rates. The Congress and every legislature in the country feels that power in the hands of administrative commissions is the only practical way to regulate public utilities. I think you face something of very much the same sort. I do believe it wise and helpful for the Congress, perhaps, to mark down the limits of the field, if it can do so, so it will not be an unlimited administrative discretion.

Senator GERRY. Isn't it true, Mr. Richberg, also, that where Congress passes any act it will also have to be construed by the courts as to exactly what that act means?

Mr. RICHBERG. That is quite true.

Senator GERRY. And how far it is constitutional?

Mr. RICHBERG. And it is also true, Senator, that the more words you use in the act the more you leave for court construction and the more difficulties would therefore rest on an administration.

Senator GERRY. Therefore we should go back to the old common-law principle of letting custom work it out?

Mr. RICHBERG. That is it, letting it be developed by custom. I think the main corrective of that is to be sure that so long as you permit private individuals to develop custom that you should not give them any sanction of public authority and an O. K. upon their customs unless they submit themselves to a continuing public supervision.

In other words, there is a type of thing which was done in some of the earlier codes which I think fundamentally is a mistake and should not be repeated. I think it is subject to proper prohibition by Congress. That is, permitting any private body to formulate a set of rules of its own determination and then administer them as it sees fit without any correction or supervision on the part of public authority. I think that should not have the sanction of government. If that type of private agreement is to be made, it should be made by the parties themselves at their peril, at the peril of the violation of the antitrust law.

Senator KING. Of course, that is another question.

Mr. RICHBERG. That is another question entirely.

Senator KING. You mentioned a moment ago the Federal Trade Commission. Was it not the intention of President Wilson, and those associated with him, including yourself, when the Clayton Act was enacted, and when the Federal Trade law was formed, the Federal Trade Act was formulated, that there should be supervision more or less by the Federal Trade Commission to determine whether or not the industry was violating the Clayton Act or the Sherman law, and whether or not it was conforming to fair practices in trade and commerce, and that if that concept had been carried into effect there would have been no necessity of even suggestng an N. R. A.?

Mr. RICHBERG. I think, Senator, if the original concept of the Federal Trade Commission Act had been developed over these years into expeditious procedure and nonlegalistic methods of operation, that a great deal of the necessity for the N. R. A. would not have arisen, but unfortunately—and this is not criticism of the present Commission or of any particular commission—unfortunately, the operation of the Federal Trade Commission Act developed steadily into a long, slow, elaborate, legalistic form of procedure, utterly incapable of meeting the varying day-by-day needs of the mass of industry dealing with the problems presented.

Senator GORE. Is that a fault of the law, is that a fault that is inherent in the introduction of a law of that kind?

Mr. RICHBERG. I can only say this, despite the claim that the N. R. A. had been a bureaucracy, the N. R. A. has been charged with doing precisely the opposite things, with going precisely in the opposite direction, doing too much in too short a time.

Senator KING. It is quite a big bureaucracy, is not it? You have about 8,000 employees?

Mr. RICHBERG. No, not as much as that. About 2,500 here and about 2,000 in the field. I do not think it has yet become a bureaucracy, Senator. I think that is one of the desirabilities of the extension of the law for 2 years, that you will not fasten upon yourself a bureaucracy.

Senator COSTIGAN. Mr. Richberg, you would not go so far as to suggest that your reasoning as to unfair trade practices should extend to unfair labor practices, would you? In other words, has not industrial history shown the necessity for definite specifications of unfair labor practices, without leaving those to administrative rules?

Mr. RICHBERG. Senator, may I read into the record the next sections of my suggestions, because I have dealt exactly with that problem?

Senator COSTIGAN. Certainly.

Senator WALSH. May I inquire as to the textile industry code. Is the textile industry code illustrative of the earlier codes, where the administration of the code was left to the industry itself?

Mr. RICHBERG. Well, I do not like to make a yes or no answer, but to some extent that is the kind of answer that I will have to make. In the first place, it was not left entirely to the industry. There were public representatives on that code and have been on it from the beginning. But, on the other hand, it is an example of a code which has been very largely administered by an industry-organized code authority.

Senator GEORGE. Lumber is the outstanding illustration.

Mr. RICHBERG. Lumber is the outstanding illustration of an excess of private control over matters of public concern.

Senator KING. There are others, too.

Senator HASTINGS. Mr. Richberg, before you leave this point.

Mr. RICHBERG. Yes.

Senator HASTINGS. Going back a moment, I wonder if this would be an apt illustration under the interstate commerce law and under the Constitution. Would it be your idea that a wholesale druggist and a wholesale grocer would be engaged in interstate commerce and therefore subject to a code, but a retail druggist and a retail grocer would not be engaged in interstate commerce and would not be subject to the code? Is that an apt illustration?

Mr. RICHBERG. I would say on the use of the word "engaged", Senator, that probably in most instances that distinction applies. I would say, however, that the retail druggist and retail grocer in his operations very seriously does affect interstate commerce. The widespread complaint, for example, of chain-store operations shows two factors. In the first place, the stores engage themselves, as a whole, directly in interstate commerce. They have retail outlets, but that is a part of interstate commerce operation.

Senator HASTINGS. Suppose we exclude chain stores?

Mr. RICHBERG. If you take the retail store, which is in competition with the chain store, it becomes evident if you have a certain industry in the same trade operating in interstate commerce, and you have a local group, you have the same situation substantially that you have in the case of railroad regulation.

Senator HASTINGS. Is not it difficult to find any kind of business that is not engaged in interstate commerce, from your conception?

Mr. RICHBERG. There are, I think as far as what are commonly called service trades, you will find many of those are not engaged in interstate commerce. Then it is a question as to how much effect, if any, they have upon interstate commerce.

Senator HASTINGS. Do you think it is limited to the service trades?

Mr. RICHBERG. They are the only ones that I would want to say right now that I would give such a definition to. I do not think that is probably true.

Senator HASTINGS. In order that we may get the administration point of view, is it the view of the administration that this code should cover all kinds of business except those which you mentioned, the service codes?

Mr. RICHBERG. That is another question that I would like to submit for the judgment of the Congress, and that is as to whether those minor industries which in their effect upon interstate commerce are so limited are worthy of the exercise of a regulatory power. That is a question that I think should be frankly considered by the committee, because, as has been pointed out, a few of the codes under N. R. A. comprise a vast volume of American business and employment. On the other hand, an enormous problem of administration is imposed upon the N. R. A. by a mass of minor codes which do not control any great volume of business and do not have any great effect upon interstate commerce. I think it is a question that the committee can very well consider, as to whether there might be a limitation upon codification to industries of a certain size. That is simply a question which I submit for your consideration.

The CHAIRMAN. Will you furnish to the committee those industries which you have in mind?

Mr. RICHBERG. I think we can make a tabulation of that type of industry without much difficulty.

Senator HASTINGS. Do I understand, Mr. Chairman, that the request is that Mr. Richberg shall furnish us the industries that in his judgment ought to be subject to the code and those that ought to be eliminated?

The CHAIRMAN. Yes.

Senator HASTINGS. I think that would be a good idea.

The CHAIRMAN. Suppose we let Mr. Richberg proceed. We have only a few more minutes to finish up these suggestions, and then we will have Mr. Richberg back here tomorrow.

Mr. RICHBERG. If I may proceed, Mr. Chairman, without interruption, I can finish inside of 10 minutes.

The CHAIRMAN. You may proceed. We will have you back tomorrow.

Mr. RICHBERG. There should be authority provided in the law for those controls over natural-resource industries, which are required for eliminating waste, controlling output, stabilizing employment, and the protection of the public interest.

(6) The President's power to impose conditions upon his approval of a code, or to require amendments or modifications thereof, should be explicitly given. But the proponents of voluntary codes should have the right to withdraw their consent from codes so modified as to be unacceptable to them.

Just a word of explanation. We have had a great deal of controversy over two questions. First, to the extent of the President's power to modify codes before, or to amend them after, approval; second, whether in submitting codes the proponents were bound to accept any future modification. It seems that that question should be clearly settled. In the first place, the President should have power to impose modifications or amendments, and in the second place, those who propose a code should have an opportunity, within a limited period, to withdraw their assent. That raises the next point, that is the imposition of codes that are involuntary.

Senator CONNALLY. You mean for a whole industry or for an individual?

Mr. RICHBERG. This will be for the industry as a whole.

(7) There should be a clear grant of power to the President to impose a limited code whenever there is no code in effect, which limited codes should contain only certain requirements, such as minimum wages, maximum hours, the prohibition of notoriously unfair business practices, provisions to prevent the waste of natural resources, if necessary, and to require that information be furnished which is necessary to the public interest.

(8) The Congress should itself set the standards, answering the question asked a few minutes ago by Senator Costigan, of minimum wages and maximum hours for administrative application in limited codes. Some flexibility in these standards is absolutely necessary, but the area of executive discretion should be rather narrowly defined.

This offers the opportunity, if the Senators please, for industries, by voluntarily presenting codes which are subject to approval, to protect trade practice provisions and otherwise protect the needs of the industry, and at the same time to provide that flexibility as to wages, hours, and other conditions; but it also provides the alterna-

tive that in the event of the refusal of the representatives of the trade or industry to take advantage of this opportunity the Government shall not be left helpless to protect the fundamentally necessary labor conditions in the industry from unfair competition. In other words, to set the floor of minimum wages and maximum hours, and to protect natural resources, and to require information to be furnished so that it may be determined that the standards imposed are being carried out. Those are limited requirements, but if they are to be imposed as a matter of law by an administrative agency it becomes doubly important that the standards should be laid down by the Congress and not left to the administrative discretion. But I do point out here that those standards should have within them sufficient flexibility so that the President would not be required to apply one yardstick to every industry in the country where some flexibility is necessary, but the area of administrative discretion should be so limited as to essentially determine the standards laid down by the legislature rather than by any Executive action.

(9) Provision should be made for financing code administration so far as possible by the trade or industry concerned, subjecting the collection and administration of such funds to the general approval of the N. R. A., so as to protect individual and minority interests, as well as the public interest.

In other words, the burden of the cost of self-regulation and governmental supervision of industry should be borne by the trade and industry itself, but the Government, by its supervision of any assessments and expenditures by a sort of budgetary control which is now being exercised by N. R. A., should be able to prevent any unfairness in the levying of such assessments for the support of such code administration, in levying the assessment unfairly against either an individual or a minority interest, or upon the majority itself. As a matter of fact, the cost of administration in the total seems large, but as to the effect upon the individual item of business or the consumer, it is practically infinitesimal.

Senator CONNALLY. I have heard a great deal of complaint about the code expenses.

Mr. RICHBERG. There has been some complaint.

Senator CONNALLY. Does the N. R. A. regulate the amounts that are to be paid to the administrators and the code authorities?

Mr. RICHBERG. The N. R. A. has established the principle, Senator, of not approving the enforcement of any assessment unless the N. R. A. has approved the budget, and all budgets which are now made are subject to administrative approval by the N. R. A. before there is any authority for imposing the cost upon the industry.

Senator GORE. Does that include, Mr. Richberg, keeping the budgets balanced?

Mr. RICHBERG. There is no difficulty about keeping them balanced. The difficulty is in getting them right.

Senator CONNALLY. I understood that the salaries of some of the members of code authorities were very high, they were out of all proportion to the small work that was done and to similar work that was done by the N. R. A.

Mr. RICHBERG. I think there have been efforts to set high salaries, but I also think in most instances those have occurred where the budgets have not been approved by the N. R. A.

Senator CONNALLY. But they have to pay the assessments.

Mr. RICHBERG. They are wholly voluntary.

Senator CONNALLY. It doesn't matter to the fellow who has to pay them whether they are voluntary or not. I have heard of some country newspapers, some little county-seat paper, that pays $25 or $100 to the code authority, I forget the amount, and they are not compensated for it; there is no compensating advantage to them at all. If they do not pay it they cannot keep the Blue Eagle; they get the Blue Eagle taken down.

Mr. RICHBERG. If the Senator please, the newspaper code, if that is what that refers to, is a voluntary code. The steel code is the same type. It is a code in which they did not ask the aid of N. R. A. at all in the voluntary collection of assessments. How they spend it is no more our business than it is how much they pay their lawyers.

Senator CONNALLY. It is your business, if you are going to force everybody to come in and be a part of the code or take down the Blue Eagle of anybody who violates the law. I think you should not permit them to assess them anything they want to. I think it is your responsibility.

Mr. RICHBERG. Senator, under those circumstances it is clearly our responsibility.

Senator CONNALLY. They have been taken down. If you permit them to be taken down and to appropriate exorbitant salaries to the men running the code, I think that is wrong.

Mr. RICHBERG. I agree with you.

The CHAIRMAN. You may proceed, Mr. Richberg.

Mr. RICHBERG. Mr. Chairman, may I answer one question? The reason I was confused, Mr. Smith tells me that recently the N. R. A. has assumed control also of the voluntary code authorities, which have not been assumed previously.

Senator KING. I might ask a question, but it does not call for a reply. One of the code authorities, one of the members who administered the code, came to see me the other day and he confessed he was getting $25,000 a year.

Mr. RICHBERG. There are a large number of trade association executives who received, long before the N. R. A., more than $25,000 a year. That condition, of course, has been established, like lawyers' fees. They sometimes seem out of all reason.

The CHAIRMAN. How many more suggestions are there?

Mr. RICHBERG. There are only seven short ones, if you please. About a page more.

The CHAIRMAN. Proceed.

Mr. RICHBERG. (10) The provisions in the present law for voluntary agreements to improve industrial or labor conditions should be preserved.

(11) In order to sustain the effectiveness of codes and agreements, the use of insignia and labels should be authorized, whereby consumers may assist in supporting the standards of fair competition.

(12) The present exemption from the provisions of the antitrust laws should be restricted and defined so as to provide that cooperative activities, legalized by code provisions, shall be lawful only when the codes themselves have been written in compliance with the antimonopoly requirements of the act.

In other words, if the question arises as to whether the code itself complies with the antimonopoly requirements of the Act, the burden

is upon those who have supported it to defend themselves, and they are not granted absolution by the terms of the law.

(13) The rights of employees should be defined, as at present, in section 7 (a), which contains a statement of principles which are gaining in general understanding and acceptance and which have already received the interpretation and sanction of the Supreme Court.

(14) Various terms in the act should be clarified by definition.

(15) The general provisions of sections 8, 9, and 10 should be continued with some desirable improvements in language.

The Senator from Texas, I believe, is familiar with section 9.

(16) The machinery for the enforcement of codes should be strengthened by providing for: (*a*) Preventing violations by equity procedure; (*b*) making violations of codes or rules punishable only by a fine; (*c*) providing for the compromise of liabilities incurred; (*d*) authorizing findings of fact on employee complaints as the basis for expeditious judicial proceedings; (*e*) making remedies under the Federal Trade Commission Act available for the enforcement of codes, agreements, or rules.

(17) In order to maintain the continuity of present codes and at the same time to insure any necessary revisions, there should be a requirement that all codes shall be revised within a limited period of extension so as to conform to the requirements of the amended act.

The foregoing suggestions do not represent all the many possible revisions of the act which have been given consideration by the National Recovery Administration and which, in varying degrees, would meet with its approval. They are intended, however, as an outline of those recommendations upon which there is a general accord and which may involve a minimum of controversy. They are regarded as practically necessary, in the light of experience, to the continued and improved functioning of the N. R. A. If they are adopted, they should aid to strengthen the exercise of the Federal authority within a definite area wherein it is urgently required; while at the same time removing many fears, either of undue extension of governmental authority, or of the illegal exercise of private economic controls to the injury of the public interest.

Senator HASTINGS. Mr. Chairman, I was wondering whether Mr. Richberg could furnish us without too much trouble a list of the existing codes and then mark those that he thinks ought to be eliminated.

The CHAIRMAN. You can do that, can you not, Mr. Richberg?

Mr. RICHBERG. I think I can furnish you a list with a recommendation. I would not want to take the sole personal responsibility, but I can give you a recommendation as to those which could be eliminated in the judgment of the N. R. A. Administration with the least harm and the most benefit.

Senator HASTINGS. That is what I mean.

Senator WALSH. Could you make up a list of the codes that are voluntary? Are there any voluntary codes left?

Mr. RICHBERG. They are all more or less voluntary codes. We review them as on the question of the budget. Practically all the codes are voluntary in the sense that there had been no imposed codes in the entire history of the N. R. A., they have all been voluntarily produced, but the administration of them has not been left entirely in the hands of the private code authority.

Senator WALSH. Could not you bring out that fact?

Mr. RICHBERG. We will bring out the relationship.

The CHAIRMAN. Does that finish your suggestions?

Mr. RICHBERG. That finishes my suggestions.

Senator BLACK. Before you leave, I would like to have myself, and I imagine most of the committee would, the two books that Mr. Richberg referred to on prices and wages under the N. R. A.

The CHAIRMAN. You have those there?

Mr. RICHBERG. We have ample copies to furnish to all members of the committee.

Senator GORE. Are they here?

Mr. RICHBERG. I haven't them here at the present time, except I have my own copy, but we can furnish these copies.

Senator GORE. Including the summary of the whole business?

Mr. RICHBERG. We have another report which was made only a few days ago. That makes three volumes that I can furnish.

Senator GORE. Was that by Mr. Henderson?

Mr. RICHBERG. Yes; by Mr. Henderson.

Senator GORE. You can let us have those by tomorrow?

Mr. RICHBERG. I can let you have them tomorrow.

The CHAIRMAN. The committee will recess until 10 o'clock tomorrow morning. Mr. Richberg will be here at that time.

(Whereupon, at the hour of 11:54 a. m., the committee recessed until 10 a. m. of the following day, March 8, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

FRIDAY, MARCH 8, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 10:10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Connally, Gore, Costigan, Byrd, Lonergan, Black, Gerry, Guffey, Couzens, Keyes, La Follette, Metcalf, Hastings, and Capper.

Also present: Senator Gerald P. Nye; Mr. Blackwell Smith, acting general counsel, National Recovery Administration; M. Leon Henderson, economic advisor, National Recovery Administration.

The CHAIRMAN. The committee will be in order.

Mr. Richberg, have you a further statement with reference to your testimony?

STATEMENT OF DONALD R. RICHBERG—Resumed

Mr. RICHBERG. Mr. Chairman, I do not wish to volunteer additions to what was said yesterday, except to call attention to the fact that we endeavored to comply with the request for the general documents requested and prepared.

The CHAIRMAN. Yes; I have a statement here before me that there will be furnished some time today certain data.

Mr. RICHBERG. Mr. Chairman, the reports which were requested have, I believe, been furnished already to the individual Senators.

I want to explain something about those reports so that they will be understood. Originally there was prepared a report on hours, wages, and unemployment, which is a voluminous document, which has been furnished; also a report on prices and price provisions in the codes. Then there was a general report.

An effort has been made to improve this presentation by preparing this three-volume set, which has been furnished to the Senators; first, condensed information upon the operation of the act, which is a running statement, which in the first report was interspersed with charts. Then the tables on the operation of the act, and then charts of the operation of the act, feeling that they would be more easily utilized in this form than in the somewhat garbled form we had them in, where the charts and tables and discussions were all mixed in together.

The CHAIRMAN. Have you one of those for each member of the committee?

Mr. RICHBERG. We have those for each member of the committee, and they have been placed on the desks, as I understand.

The CHAIRMAN. They are all in front of us.

Mr. RICHBERG. Now, Mr. Chairman, there was a question asked yesterday regarding the code——

The CHAIRMAN (interposing). Before we adjourned yesterday, you had finished your recommendations for changes in the law?

Mr. RICHBERG. That is correct.

The CHAIRMAN. You made no explanation of any of those suggestions because of the limitations of time. Do you desire to elaborate upon any of those suggested changes?

Mr. RICHBERG. I should be very glad to do so if the committee desires, because the summary statements were necessarily rather uninformative. However, I thought that many of the members of the committee desired to ask questions rather than to listen to a continuing statement, and I am entirely at the service of the committee as to whether I should elaborate the particular suggestions or let that be brought out in answer to the questions.

The CHAIRMAN. Mr. Richberg, before we do that I want to make this suggestion to you. We have directed Mr. Boots, in our legislative drafting service, to contact you or such other persons, taking these suggestions which you have made for changes, so that he might prepare for our committee's use, a rough draft of a bill. We can make such changes in it as we desire, but I hope that you or somebody will be disposed to contact him at any time in the preparation of that bill.

Mr. RICHBERG. We can furnish all of the information that is desired, Mr. Chairman, and all of the cooperation that is requested.

Senator KING. You will not assume of course that the so-called rough draft which Mr. Boots may aid you in preparing is going to be the final determination of this question by this committee.

Mr. RICHBERG. I assumed from what the chairman said that what was desired was something that would put in concrete form, rather, the suggestions made, without in any way committing the committee.

The CHAIRMAN. We have directed Mr. Boots to get up a bill for us. You have made the suggestions. He will prepare it, but I hope that the authorities down there will feel disposed to cooperate with him to the limit.

Mr. RICHBERG. We will, to the utmost degree.

The CHAIRMAN. Of course the committee will make such changes in the rough draft as they desire.

Are there any questions of Mr. Richberg?

Senator KING. And some members of the committee may ask for an entirely different bill from that which has been suggested.

Senator HASTINGS. Mr. Richberg, just before we adjourned yesterday, we suggested, Mr. Chairman, to Mr. Richberg, that he give to us a list of the codes, together with a list of those he would recommend to be eliminated. I do not find that on the desk. I do not know whether the list of codes is there or not.

Mr. RICHBERG. Mr. Chairman and Senator Hastings, we are preparing lists which may be of use to the committee along the lines of your suggestion. I have not before me the exact transcript of the statement made yesterday, but I should like to make it in the same

form that I endeavored to then, and that was that what we could properly present to the committee would be a division of codes into different types as to industries primarily engaged in interstate commerce, those affecting interstate commerce largely, those of less effect upon interstate commerce, those having large volumes of employment, those having smaller volumes of employment, in order that the judgment of the committee and Congress as to any limitations they saw fit to impose upon the administration of the act could be written into the requirements of the law.

As to the exact line of demarcation, it depends entirely upon the standards that are set up. I tried to make this clear yesterday. There are in the so-called "service trades" some 3,000,000 employees involved, and some of the most overworked and underpaid employees in the entire industrial system. Naturally, under the Recovery Administration, we have done everything possible to aid in improving the conditions in those industries, not merely for the benefit of those employed therein, but for the entire public welfare involved.

There has been from the beginning serious legal question as to the extent to which such regulation might go. My own disposition, if I were asked to make a recommendation, would be that we should proceed to ascertain by both facts and law how far it was desirable and how far it was practical to regulate conditions.

Senator HASTINGS. Haven't you done that?

Mr. RICHBERG. To some extent we have. To some extent we have made a very valuable experience in that line, and from the administrative standpoint I can give you now a brief outline of the results of that experience, and this is in process of being mimeographed so that it will be available for the committee just as soon as the mimeograph can be prepared.

This is an outline of the situation. In the list of the service trades, the codes which have been administratively suspended, that is those that are not in operation from the standpoint of administration—include barber shops, laundries—the first involving employment estimated at 200,000 and the second 233,000.

Senator WALSH. Does that mean they are in operation in some places by voluntary consent?

Mr. RICHBERG. It means in some localities, associations are endeavoring to maintain standards, but that the N. R. A. as an administration is not attempting to bring about compliance.

Senator WALSH. That is what I understood.

Senator KING. And are the heads of those various codes still functioning and receiving compensation?

Mr. RICHBERG. I do not think there has ever been a code authority established. We have no connection with them administratively at all.

Senator WALSH. In other words, there is an agreement between the persons engaged in these lines of business fixing the hours when their shops will be open and the wages they will pay, and the prices they will charge.

Mr. RICHBERG. And sometimes regulated under local law. So that it is beyond question of agreement.

The second group is a very large one——

Senator KING (interposing). Pardon me. Does that include hotels?

Mr. RICHBERG. No; it does not.

The second group, the codes in which trade practices have been suspended—that is, the trade-practice provisions but the wages-and-hours provisions and section 7 (a) are still held to be effective. This is a very large list, involving a very large number of employees.

Cleaning and dyeing, 110,000.
Hotels and restaurants, 900,000.
Motor-vehicle storage and parking, 130,000.
Advertising display installation, 2,000.
Advertising and distributing, 100,000.
Bowling and billiards, 160,000.
Shoe rebuilding, 40,000.

That group of codes is in a position a little difficult to describe. The codes were originally adopted, and an effort was made to bring about the improvement of business and labor conditions. A great deal of difficulty was encountered, particularly in the line of compliance; one cause of the difficulty being the lack of adequate organization of the industries themselves for self-discipline; another cause being the legal obstacles in the way; another cause being the ease of evasion of many of the trade practices provisions.

As a result of this experience, it was finally determined that the trade-practice provisions of these codes would be suspended, but in order to retain as much benefit as possible for improved labor conditions under these codes, those conditions were left effective.

Senator KING. And the code authorities are still supreme in enforcing those labor provisions and any others that they desire.

Mr. RICHBERG. No; I should say that the code authorities were practically innocuous under the circumstances, because the trade practice provisions have been suspended, and all that they can do is to aid in having maintained wages and hours provisions to prevent unfair competition along those lines.

Senator KING. They are functioning for that purpose then, are they?

Mr. RICHBERG. I am informed—I am not keeping the details of them—that they are not really functioning in any of those groups and that the code authorities have no power over the labor provisions.

Senator WALSH. Has it been your experience that where you have surrendered the administration under these codes that there has been a tendency to reduce wages and to increase the hours of employment?

Mr. RICHBERG. There is not the slightest question about that; it has followed automatically.

Senator WALSH. That has been my observation. It raises the question of how far we should go in eliminating from the N. R. A. certain businesses where that practice is likely to develop rapidly; isn't that true?

Mr. RICHBERG. That is the very grave danger, Senator, of eliminating any of the businesses, which I felt should be presented to the members, and that is where they involve wage and hour conditions, there is no question that in most instances the result will be a relapse into more vicious competition in wages and hours in those industries, with the resulting effect upon labor.

Senator COSTIGAN. Mr. Richberg, you spoke about the suspension of the fair trade practice provisions in certain of the codes. What was the reason for that suspension?

Mr. RICHBERG. It varied from industry to industry, but I can give you a very good example and one that has been quite notorious,

and that has been the cleaning and dyeing code. The difficulties of establishing fair prices and maintaining them under the cleaning and dyeing codes were very great and notorious, partly because of lack of organization in the industry itself, inability for self-policing, and partly because of the legal questions involved, and very serious legal questions of every variety.

The industry, as a matter of fact, needed aid as much as any industry in this country. It was notorious for racketeering, for bombing, for every kind of vile industrial practice. It would have been impossible for the National Recovery Administration with its grant of authority, not to have attempted to do something with a situation which was a stench in the nostrils of the entire United States. I suppose there were very few large towns where the cleaning and dyeing industry was not the cause of a great deal of actual disturbance and violence. It was not merely industrial competition of a ruthless variety, it was industrial warfare. Under the pressure from this industry——

Senator KING (interposing). The warfare came oftentimes from racketeers and had nothing to do with the industry.

Mr. RICHBERG. It is very hard to locate it, Senator. The warfare came from all varieties of causes. It involved essentially the old, old problem of cutting wages and cutting prices to get the business away from the other fellow, and then labor revolted at the cut wages and insisted upon improved conditions, and any decent operator in the business himself revolted against it, and the organized associations to try to bring themselves on a decent price and labor basis. We did all we could to help them. It was very much needed.

As a matter of fact, there has been a vast misconception about that industry, as to its relationship to interstate commerce. It is quite obvious that the little pants presser around the corner of whom you have heard so much would have nothing to do directly or in a very remote way with interstate commerce. That is quite obvious. But when a man from his remoteness to the situation looks upon the little pants presser and says, "This is the cleaning and dyeing business", he does not understand the industry he is talking about. It probably is not understood that probably a large amount of the cleaning and dyeing in Washington is done in Cumberland, Md. It probably is not understood that a large amount of the cleaning and dyeing in New York is done in Jersey City. In other words, a Federal judge, Federal Judge Knox in New York City, in a rather strong opinion found as a matter of fact that the question he was dealing with was one of interstate commerce in the cleaning and dyeing industry.

So that the sweeping assertions of some Federal judges, I might mention in complete disregard of the facts, assuming what no one could for one moment assume, that this industry had anything to do with interstate commerce, are simply examples of what I stated yesterday, and that is the need of education of the bench about modern economic conditions.

However, with all of the difficulties involved, the result of an unenforced or a partially enforced code, is this, that the honest and conscientious man who tries to live up to the law suffers by the racketeers and chiselers, and in time it becomes unfair to ask its maintenance when you cannot prevent unfair competition in those stand-

ards. So that in this situation these trade practices in the cleaning and dyeing code were suspended.

Senator COSTIGAN. Have such practices continued regardless of such suspension?

Mr. RICHBERG. As a matter of fact, in many instances there has been distinctive improvement brought about because of the formation of associations in connection with the National Recovery Administration, and as a result, better local discipline.

I have in mind several instances in which since the code had been put into effect and after the practices have been suspended, conditions have been very much improved by the cooperation of local merchants and the local authorities in maintaining more respectable conditions in this industry. But that does not meet the fact still that the employees in this large group of seven trades are as large a group of overworked and underpaid employees as you will find in the United States, and it is a very serious question as to how far we should take the responsibility of leaving this large group of employees, this large group which to some extent need trade practice assistance, as in the cleaning and dyeing. It is a question as to how far you should leave them with no effort to protect them.

I say that is a matter that can be submitted without any more than a statement of the facts to the judgment of Congress. We have been trying to work out step by step an improvement in what we could do and not to do more than we could do, and we felt that step by step we were gaining on the problem. We have tried to create local agreements, using Blue Eagle insignia, in order to educate consumers, in order to establish a better ethical standard, to create public sentiment. It is a slow process. I hate myself to see any of the practices abandoned, but as to how far the Congress believes the Government of the United States should engage in that effort to ameliorate business conditions and improve labor conditions is for the judgment of the Congress. We freely admit the difficulties of it, we freely admit the consequences of failure in the effort, and we freely admit the legal obstacles.

Senator WALSH. You think the effort should continue while the depression is serious and prevent these abuses in business?

Mr. RICHBERG. I certainly would be the last person to recommend any relaxation of the effort to improve these conditions, which is so badly needed.

The CHAIRMAN. Let me get your reaction to the suggestion that has been made that in the administration of this law, that it should be placed in the hands of the Federal Trade Commission or transferred to the Department of Commerce. Give to the committee your views with reference to that.

Mr. RICHBERG. I can give you my view of that without regard to the personnel of the Federal Trade Commission or the Department of Commerce. It has nothing to do with that, but it is a question of an institutional problem. Neither the Federal Trade Commission nor the Department of Commerce is organized to deal in any way with the problems here set forward. All that would happen for example, if you extended the act and put it under the Department of Commerce would be to make the N. R. A. organization a function of a department of the Government. It would not mean any difference except for that.

As far as the Federal Trade Commission is concerned, it would mean a vast difference; it would mean the suffocation of the act. It is utterly impossible to carry out under the requirements of the Federal Trade Commission law and under the limitations upon authority and procedure, utterly impossible to carry out under that act the program which is here involved, and the only way in which the program could be carried out under the Federal Trade Commission act would be to simply substitute the Federal Trade Commission as a controlling board and give it the powers that are now given here commingled with its existing powers, and thereby take away and lose the benefit of what experience you have had in this situation, in addition to which you would have the effort to carry out two more or less inconsistent policies in the same agency, and that would not succeed.

Senator WALSH. That need not be feared, because invariably when we transfer one board to another all of the employees are transferred.

Senator COSTIGAN. Will you state your thought a little more fully in regard to the Federal Trade Commission?

Mr. RICHBERG. I was trying to point out this, Senator: The Federal Trade Commission has semijudicial functions. It proceeds more as a court, a court and prosecutor it is sometimes called, but neither of those functions is appropriate or consistent with the function of the N. R. A. as an administrative mediatory, conciliatory body.

Senator COSTIGAN. Is there any reason why this power to put a ban on unfair trade practices should not continue?

Mr. RICHBERG. I think not only should it continue, but I think the powers of the Federal Trade Commission can be utilized in aid of the enforcement of the unfair trade practices in the codes to a far better extent than they have been up to date. I do not think there is any question about that phase of it.

Senator NYE. Before you leave that point, I should like to, if I may, ask Mr. Richberg why should not the Federal Trade Commission take on those phases of N. R. A. responsibility having to do exclusively with fair trade practices? Might I suggest, Mr. Richberg, that I have drafted, and I mean to offer today or tomorrow for reference to this committee, a bill which can be briefly read:

That it shall not be unlawful under any of the antitrust laws of the United States for any person or persons to cooperate with others by written agreement for reasonable regulation of competition in interstate and foreign trade: *Provided, however,* That such written agreement shall be lawful and enforceable only when expressly approved by the Federal Trade Commission: *And provided further,* That the Federal Trade Commission be, and hereby is, vested with authority in its discretion (1) to approve or disapprove such agreement in whole or in part; (2) and to supervise the effect of such agreement in operation; (3) to declare as unfair competition any business practice or method which may be condemned as unfair in said agreement when signed by a substantial number of those engaged in any branch of industry or trade where such a practice or method may exist or which may be affected thereby; and (4) at any time upon due notice in the public interest to abrogate said agreement with respect to any provision therein which the Federal Trade Commission may deem to be contrary to the fair competitive conditions based on sound economic principles.

Frankly, the purposes there would be to leave the business of code making entirely with the Federal Trade Commission.

Mr. RICHBERG. Senator, I see no particular gain if I might suggest it, in transferring the functions of the existing Recovery Administration to another body unless they are consistent with the other duties of that body. Otherwise there would be no reason why you should

not use the Federal Trade Commission as well as a board over N. R. A. It is only what name you give it if you give it the powers. That would make no difference. But here is what you would be meeting, and I want to give briefly the result of the first year or so of experience of N. R. A., in which we came to this conclusion, I think quite generally, and that is that the functions of administration and prosecution, the functions of cooperation if you will, and hostility and conflict must be separated. For that reason it was thought that when labor controversies arose, they should be taken out of the N. R. A. and any efforts of a minatory nature or other otherwise should be carried on by a body separate from N. R. A. and not a part of the administrative machinery, because when you create that hostility and controversy and division, the result is that the body which must administer and decide a conflict loses a great deal of its mediatory and conciliatory power.

Take the Federal Trade Commission on the trade practices, and I think the same logic precisely applies. If you are going to attempt to cooperate in the administration of a law of this type, that body which is engaged in a cooperative administrative capacity should not become the next day the prosecutor.

Senator NYE. Has not that been largely true with respect to codes? Have not men who have written the codes been largely the men who enforced the codes?

Mr. RICHBERG. Well, I would not say that that is exactly accurate, Senator, because the codes have been written in this manner; that is, the original code has been prepared by a trade association, it has been subjected to criticism, and then finally written by a composite of opinion, and then approved by the President.

There is a great deal of misunderstanding about methods of administration. Certain parts of the codes have been given to code authorities for administration; matters which code authorities could perfectly properly do, checking on violations of requirements, and requiring persons to show the reasons for such violation.

I have sat in code authority meetings where that was taking place. It was a highly salutory matter of self-discipline. But when you come to imposing any penalty of law or any prosecution in behalf of the public, that has never been a function of a code authority under any circumstances, and there is no authority for it in the law, and there is a great deal of misunderstanding about what the code authorities can do and have done. There are code authorities that perhaps swelled with a little power, have indulged themselves in threatening and trying to browbeat people into doing things, but as a matter of actual exercise of power, where have they had any power? They have no control over the judicial machinery.

Senator NYE. What has the N. R. A. done when it has found code authorities exercising powers of that kind which appropriately were not its to exercise?

Mr. RICHBERG. In some instances they have been preemptorily removed; and in other instances their personnel has been changed.

Senator NYE. What other instances are there where they have been removed, occasioned by acts of that kind?

Mr. RICHBERG. Some of the recent ones were the code authority of the cotton garment industry and the candy manufacturing and the retail solid fuel.

Senator NYE. What have they been guilty of doing?

Mr. RICHBERG. I must say, frankly, Senator, that to give an adequate story of this is beyond me. I would suggest that individuals conversant with the details be called in those matters, because it is quite a long story. I know parts of it, but I could not give you an adequate statement.

Senator HASTINGS. Isn't this true, Mr. Richberg? Does not the code authority take away the blue eagle or other insignia?

Mr. RICHBERG. No; the code authority has no control over that. That is entirely by N. R. A. compliance.

Senator HASTINGS. Who was it that took away the Blue Eagle from that mill in the South?

Mr. RICHBERG. The Harriman Mills?

Senator HASTINGS. Yes.

Mr. RICHBERG. That was the compliance division of N. R. A. under the orders of the Administrator.

Senator HASTINGS. Then there is the N. R. A. itself through its compliance division——

Mr. RICHBERG (interposing). Of the N. R. A.?

Senator HASTINGS. Of the N. R. A.

Mr. RICHBERG. Yes.

Senator HASTINGS. Then you would not say that was the N. R. A inflicting the punishment?

Mr. RICHBERG. That is the N. R. A., but that is not the code authority. I was explaining that the code authority has no control over that, that the administration of the N. R. A. has a necessary administrative control over the use of labels and insignia. There is no question about that.

The CHAIRMAN. Give us a clear explanation. Just explain what the compliance board does in the N. R. A., and so forth.

Senator WALSH. I suggest he take it step by step; starting out with a group of industrialists, to form a code.

Senator COSTIGAN. I should be glad if Mr. Richberg could draw a clear distinction between what are known as voluntary and involuntary codes.

Mr. RICHBERG. I would like to start perhaps with that distinction. We have no codes which can properly be described as involuntary codes. The power to impose a code has never been exercised, so that all we have are those that must be described as voluntary codes.

Senator COSTIGAN. In that statement, you treat the imposition by the President of a code as a test of what is voluntary?

Mr. RICHBERG. Exactly.

Senator HASTINGS. Isn't it true that industry has been told that if they did not voluntarily do it, it would be imposed upon them?

Mr. RICHBERG. I do not know whether industry has been told in so many words, but it is true that the possibility has always been there that a code might be imposed.

Senator HASTINGS. Without that being in the law, do you think that all of these codes would have been in existence today voluntarily?

Mr. RICHBERG. I think that undoubtedly that most of the codes would be in existence today. I am not sure whether the provisions would be as satisfactory from the standpoint of the public interest as they are today, because the power to impose a code——

Senator CONNALLY (interposing). Pardon me. Can we not have the photographers get through with the pictures so that we can pro-

ceed without this constant flashing of photographers from all directions?

The CHAIRMAN. Yes; I think you gentlemen have enough pictures for all of your papers now.

Mr. RICHBERG. My attention has been called to this fact, which is a separate matter. I want to be quite clear about it. The Federal Alcohol Administration, which is operating under the N. R. A. by virtue of the N. R. A. law, as a matter of fact, has codes which could be called involuntary codes. I have always thought of that as a separate administration, but it is utilizing the functions of the N. R. A. Act.

Senator COSTIGAN. Is there not another distinction? In the advertising industry, for example, I understand that all members must contribute, and that the effect of that arrangement is to exercise the power to tax the members, and that there are other codes under which contributions are voluntary in the sense that those affected do not need to contribute to a common fund.

Mr. RICHBERG. I will ask, but I am not sure whether there has been a test of any power to impose assessments and to collect by law against an unwilling participant. Mr. Smith tells me that there has been one test case in which the court did hold that the power existed by implication to support the necessary expense of administration. I want to say that my active experience in N. R. A. and particularly in the legal questions, ended last June, and up to that time the question of assessment had been one of the most doubtful ones I had faced, and I had always been very hesitant as to the extent of legal power to impose and collect assessments.

Senator COSTIGAN. Where the power to tax is utilized in that way, would you still term the code a voluntry code as distinguished from an instance where there has been no imposition by the President of a code?

Mr. RICHBERG. If you accept this theory, Senator, that you can only have a code and only have those conditions which a large majority group truly representative of the industry approved, I will then say as to the disapproving group, such a code may be called an involuntary code. Under the law we have had no authority except in the imposition of codes section—which has not been exercised—we have had no authority to impose any code that was not supported by those truly representative of the industry, which has meant, therefore, that at least to a large majority of the industry it was not an involuntary code but was a voluntary code. It is quite true that as to the minority, they would regard all such codes as involuntary codes, as to the dissenting minority. That is quite persistent throughout the code formulation.

Senator COSTIGAN. It is my understanding that the expression "voluntary" is used in three different senses by those who are connected with the N. R. A., and I was anxious to have the distinctions drawn.

Mr. RICHBERG. I am very glad to, Senator, and it is very helpful. It is a term which is easily subject to misunderstanding. In the first place, as I said, every code must be voluntary which we have now, with the exception of the alcohol codes, because it must be supported by a majority of those truly representative of the industry. On the other hand as to those dissenting, it is of course involuntary as far as it can be enforced against them.

Senator BYRD. Do you mean a majority in number when you say "majority"?

Mr. RICHBERG. It had to be truly representative, to represent a majority in number and in volume. The words "truly representative" meant to cover by that volume and numbers, in other words, that neither the large group by their volume of production would be permitted to dominate over the group of smaller enterprises, nor the group of smaller enterprises by the volume of their numbers be permitted to dominate.

Senator BYRD. It had to be both numbers and a majority of production?

Mr. RICHBERG. That is what is my understanding of what is truly representative.

Senator BLACK. What is the formula for that, Mr. Richberg? How do they determine it? How did you determine it?

Mr. RICHBERG. The analysis of conditions in the industry, and the statistical information which has to be presented as a part of the code before the finding can be made, shows the total number of those involved in the industry, how they are represented, in the application of the code. It also shows the total volume of output and business done, or whatever it may be that indicates the volume. There is a grave difficulty in meeting that condition where you have an industry very poorly organized from the standpoint of a trade association; in other words, you may be required to make the assumption after adequate notice and after hearing from all of those who have been given an opportunity to be heard, that you are receiving the views of those representing the majority that are truly representative of industry.

I might give, for example, the situation in regard to the retail trades, where you have hundreds of thousands of stores involved, and no association adequately comprehending all of those separate enterprises. In a condition of that sort, the analysis has been made as to whether from the representation which was made, with ample opportunity and notice to be heard, it was clear or apparent that those who were speaking were truly representative of the sentiment in the industry. That is the fundamental problem.

Senator BLACK. What I was getting at was this. Take the steel code, for instance. There are several very large steel companies, the Bethlehem Steel, the United States Steel Co., and there are many steel organizations. What formula has been worked out, if any, to see that the larger companies—what definite formula— to see that the larger companies did not control the terms of the code?

Mr. RICHBERG. This is the situation in that, Senator. I happen to know something about that code.

Senator BLACK. I did not mean that code alone, but just generally speaking, and taking that merely as an example.

Mr. RICHBERG. I will tell you about that particular code because I happen to know something about it. The code committee which brought down the code was representative by express authority of an overwhelming volume of the industry and numbers of those engaged, in fact those that were outside the code were such a small fractional quantity that there could not be any question in that case, because they happened to be a well-integrated industry. From that standpoint it gave us very little problem as to the representative character of

those asking for the code. Our grave problem there was the propriety of the code itself, but the representative character was very clearly indicated.

Senator BLACK. What I was getting at was this. When this bill came up, I offered an amendment which was defeated, which provided that each code before it was approved must be subjected to a certain test in two regards. One was that each unit of the industry irrespective of volume and irrespective of size should have an equal voting strength with each other unit. I did that in order to try to get some kind of formula. What formula has been adopted, if any, to see that the smaller units of industry actually have their voting strength so that they cannot have something imposed upon them that would be thoroughly to the disadvantage of the smaller industries?

Mr. RICHBERG. In the composition of code authorities, where the group presenting the code has been thoroughly representative, I think I may say, in most instances, setting a general policy, that group has been permitted to indicate the manner in which the code authority should be set up and the proper representation of the different interests in the code authority. There have been problems that have not been so clear, and usually involved a multiplicity of separate actions, that is to see that the code authority is truly representative. In many instances we have had application or demand from a small unit in a trade that they be given a wholly disproportionate representation on code authorities, and I think I am fair in saying that in some instances they have been given a disproportionate representation measured by the volume of business done by them, but in order to make it clear that the minority group were not being subjected to domination by the majority, that has been done. On top of that, I want to emphasize this other point, and that is that there is a grave misunderstanding as to the extent of real authority of the code authority. It is commonly assumed, apparently, that a code authority is an arm of the Government which runs the industry under the code. Nothing could be more remote from the facts. As a matter of fact, the code authority has certain definite duties under the code in the way of collection of information, in the way of distribution of information, in the way of collecting complaints and adjusting complaints, and if found, they go to the compliance division of the N. R. A. It is not as though they had a sweeping authority to write rules and regulations, because as a matter of fact that does not exist.

Senator BLACK. It does have the authority, does it not, to propose these original codes, which contain the regulations for the operation of the business, subject to the approval of the N. R. A.?

Mr. RICHBERG. It has the opportunity, but, for instance, we had, I think, 27 different codes—maybe I have underestimated it—presented for the bituminous coal industry. We had, I have forgotten how many for the oil industry. If there are dissenting groups, they always come in and press their own code. It is not as though one group dominated the situation.

Senator BLACK. Let us take the steel code just a minute further.

Mr. RICHBERG. In the steel code I may say frankly as I remember it there was but one code presented, because of the complete integration of that industry.

Senator BLACK. Of course we all realize that there is a sectional difference in all industry, and my recollection is—I am not sure but

my recollection is—that almost half of the industry in the country is located in five counties in the United States. I know it is a tremendous proportion. Let us take for instance the steel code, which contained a provision which one section of the country thinks is very antagonistic to its interest—Pittsburgh plus. If there had been in that organization proposing that code and fighting for it—and I understand it was adopted practically as suggested—an equal representation in different States, as the States have in the Senate, and each small unit had had an equal voting strength in the code as proposed, that would likely have had a very large effect as to the rules originally proposed by the code authority, wouldn't it?

Mr. RICHBERG. May I state in that connection, Senator, that in that very question, I am not defending the steel code as a code, but as to its preparation, that as I recollect it, Mr. Morrow, of Birmingham, representing the interests in Alabama, which is one of the great producing centers——

Senator BLACK (interposing). Yes.

Mr. RICHBERG. And that it was a one-sixth voice in the committee of six that presented that code, and I recollect very well through the negotiations the bitter difficulty that was constantly experienced in trying to meet requirements which Mr. Morrow insisted upon and which practically everybody else disagreed with, but which Mr. Morrow finally got, so I do not think in that particular instance that one section was not well represented. I would say that it was very well represented and very effectively represented.

Senator BLACK. That is probably true, but in connection with the formation of the laws, and to a certain extent these are laws in a code approved by the President, and possibly to a certain extent there is a law-making power, or at least rules which have the effect of law; different sections do have different interests.

Mr. RICHBERG. They have, and it had to be recognized.

Senator BLACK. And if you do not have some method of representation in those codes other than to simply have the view of the biggest volume of business, it necessarily would result that an exceedingly small area in the country would control the effectiveness of the code, wouldn't it?

Mr. RICHBERG. That might be. As a matter of fact, Senator, some of our most difficult and hard-fought problems have been to reconcile and take care adequately of sectional interests. When differentials, for example, have been made, and they have been made almost regularly between North and South production, there have been very violent complaints against the unfairness on the one hand of such differentials, and complaints on the other hand that the differentials were not adequate; in other words, we have to meet the problem of sectional differences in the manner of operation and the costs of operation constantly to see that there was adequate representation on the code authority or otherwise dealing with that problem of these separate interests or it would be totally impossible to hold the structure together.

May I explain just briefly, along the line of the previous request, just a little of this process of code making, because it is quite misunderstood.

Senator BLACK. I want to ask you one more question before you do that. It is necessary, is it not, if we are to transfer and continue to

transfer a part of the law making power to the N. R. A. or to the Federal Trade Commission or whatever body it is—that to me is immaterial, because one will be the other if you transfer it—but if we are to transfer that power and continue to transfer it and establish rules to govern our economic relationship, the Constitution of the United States provides that each State shall be equally represented in this law making body up here. Should there not be some formula included in the law which would provide for proper representation on the codes in the bodies that make these laws so that each section would have its proper voice?

Mr. RICHBERG. I think that is a very sound principle, and just so far as we could write that into law, there might be some advantage in making it clear that it would be enforced.

I think there has been a very serious effort right along to see that all those dealing with these industrial problems have the advice and cooperation of those representing the different sectional interests involved.

Senator HASTINGS. I was going to inquire whether the rule which you stated of majority in amount and majority in number, I suppose is sufficiently flexible for those approving the code to see to it that there is no discrimination because of geographical location?

Mr. RICHBERG. I hesitate to state any rule because there has been no rigid rule on the subject. The effort has been to interpret the language of Congress that those should be truly representative.

Now, Mr. Chairman, if I might briefly without taking too much time describe something of this process of code making and enforcement, I think I can do it without taking but very little time.

The CHAIRMAN. Yes; proceed please.

Mr. RICHBERG. In the first place, I want to meet a broad misunderstanding, and that is to the effect on the part of industry that the Government has written the code. That is one charge. And the other part of the charge that as a matter of fact the large groups in the industry themselves have written the codes. Neither of those charges is accurate as a statement of exact conditions. What has happened is this.

If there was a trade association in existence, which there was in many trades and industries, which was adequately representative, that association prepared a draft of a code to cover trade practices and other provisions necessary in a code, and brought it down to Washington. In so many instances that I might say it was almost universal, it was found that the trade association did not adequately represent all of the industry. That is, the trade association itself would find it necessary to add to its numbers, representatives or groups that had never joined the association, so that there were frequently what were called code committees that came down here, composed of representatives of a dominant trade association, and representatives of groups that you might call independents.

That was conspicuously true in the case of the oil code, where the National Petroleum Association, if that is the name of the particular body—I have forgotten it, it is—the Petroleum Institute, met in Chicago with representatives of a large number of other oil groups, oil producers, oil distributors, and so forth, and they formed a very large committee, which then became a code committee which endeavored to bring in a code. As a matter of fact, in that particular instance, there was so much dissension that half a dozen or more

codes were brought in, and the administration had to finally work out a code out of a mass of codes in disagreement.

That was the first process, and that has been followed right along, and that is that a representative group would bring up a document which gradually took form. As we had more and more codes, they gradually followed a precedent and unfortunately when any bright lawyer discovered anything that he thought would be good in a code, every code had it, and they gradually grew in size.

Not a single code that was presented—and I think this can be stated without any question—was ever adopted in the form that it was brought in. When it came down here it was subjected to fire from the Labor Advisory Board, from the Consumers' Advisory Board, from the Industrial Board representatives and they were representative of those three large groups of public interest. It was also subjected to analysis by the division of economic planning and research in the N. R. A.

Senator WALSH. Did each of these boards hold hearings?

Mr. RICHBERG. No, each of these boards undertook itself an examination of the code.

Senator WALSH. In executive session?

Mr. RICHBERG. Yes, sir.

Senator COSTIGAN. Was any attention paid to the recommendations of the Labor Advisory Board and the Consumers' Advisory Board?

Mr. RICHBERG. Continually. As a matter of fact, the recommendations which held up code after code, week after week, commonly came from the Consumers' Advisory Board or the Labor Advisory Board. The difficulty in that situation was quite obvious, and quite properly that these boards were what might be called partisan, or if you will pressure groups. They were interested in promoting vigorously and to the fullest degree, their desires. That is what they were there for.

Senator COSTIGAN. The employers were similarly partisan?

Mr. RICHBERG. I assumed that at the outset. What I was pointing out is that since the code proceeded from the employer group, there was naturally less opposition as a rule from the Industrial Advisory Board, unless the particular form of the code impinged upon other parts of the industrial structure. But naturally the Labor Advisory Board and the Consumers' Board found many objections and many improvements were desirable, and very properly fought to the finish to get as much as they could in the way of concession for their particular interest. A wholly proper process.

Senator COSTIGAN. The impression prevails they were not successful in such efforts.

Mr. RICHBERG. That impression, then, is contrary to the fact, because I know it was otherwise. As a matter of fact, as I stated before, taking the Labor Board, for instance, I saw week after week in my active experience, the codes sent back to conference and rediscussion, and they were fought through because they did not comply with the requirements which the Labor Advisory Board thought were absolutely essential. In the final analysis, the result would be somewhat in the nature of a compromise, and very seldom were the entire recommendations of the Labor Board or the Consumers Board ever accepted.

Senator WALSH. To whom did these recommendations go?

Mr. RICHBERG. They went originally to the Deputy Administrator handling the code. If he was able to work out a code which he recommended to the Administrator, eventually the whole matter came before the Administrator.

After the Administrator himself had passed on the code and decided to recommend it, the entire documentary mass of material was transmitted with the code, I do not mean all of the stenographic reports, but the major reports and the particular code was transmitted with the administrator's recommendations, to the President. I may say in the case of code after code where there were very serious differences of opinion, the President himself spent long, long hours on the problem of approval or disapproval, and in many instances returned the codes for further action.

Senator WALSH. In other words, the major controversial questions went with the code to the President?

Mr. RICHBERG. They did. I should add, that in relation to the labor provision, probably one more or less accidental factor has been somewhat important. The first code which was adopted was the cotton textile code, and the establishment of a 40-hour week in the textile code was a major achievement. As a matter of fact, I think the cotton textile code is a landmark in industrial conditions in this country.

The establishment of the 40-hour week in the cotton textile code had more or less the effect of establishing a sort of standard of a 40-hour week for all codes. In other words, it was a standard as a minimum, with the effort on the part of the industries and trades to increase that standard, and the effort on the part of the labor advisory group to reduce that standard, and constantly the effect, starting with the 40-hour week as a precedent, was to move toward the 40-hour week standard.

I have charts which are in the books presented to the Senators, which will show that the 40-hour standard is the dominant standard throughout the whole code system at the present time.

Of course, the labor groups in many cases were seeking other hours, and were not satisfied with the 40-hour standard. The labor groups were opposed to the 48-hour allowance, or other allowances, to special groups of employers in time of emergency, and all of that is natural and reasonable.

Senator GORE. Could you tell us what the wages are today in the textile industry down south, as compared with 1929, for instance?

Mr. RICHBERG. I think I can give you that.

Senator WALSH. There has just been a report made dealing with the differentials.

Mr. RICHBERG. We have had a very extensive report made, and I would like to submit it to you, and I would not want to quote from memory.

Senator GORE. It is not long since the statement was made that the wages in North Carolina today are higher than in 1929.

Mr. RICHBERG. There are three types of wages which may be involved in the distinction. The real wages, that is, the purchasing power, are undoubtedly higher.

Senator GORE. The wages in the textile industry in the South are higher.

Mr. RICHBERG. The real wages are undoubtedly higher.

Senator LA FOLLETTE. You are referring to some particular code, or all codes in general?

Mr. RICHBERG. We are referring to the cotton textile codes in the South. The actual wages, that is, in the dollars, are another factor, which are also higher.

Senator COSTIGAN. Higher than in 1929?

Mr. RICHBERG. Not 1929. I was going to come to the third factor. Are you talking about hourly rates, or weekly earnings?

Senator GORE. Hourly rates are what I had in mind.

Mr. RICHBERG. Hourly rates are greater throughout the code structure. But what you will find is this, with the reduction of hours and the increase of hourly rates, if you will take the country as an average, I would say on this broad generalization, that the wages of the worker for this week's work has remained about what it was.

Senator COSTIGAN. When the codes were adopted, you mean.

Mr. RICHBERG. Yes; but as the result of the increase of employment, the shortening of hours, the number of employees has been vastly increased. Also the distribution of purchasing power in the grades of wage earners has been changed, and those submerged in the minimum wage grades more markedly lifted in money.

Senator COSTIGAN. Have the rates been also correspondingly changed in the higher grades?

Mr. RICHBERG. Not to a compensating degree, but what has been found has been that in the higher-up grades they have not the same amount of increase, which, as a matter of fact, would have resulted in a very large imposition of cost on the industry.

Senator COSTIGAN. Has the aggregate wage expenditure of the employers remained the same, or increased?

Mr. RICHBERG. No; the aggregate wage expenditure of the employer has enormously increased. The labor income in the last year and a half has been increased considerably and I think I can give you the exact amount. I would like to put in an answer to this question because it is right helpful at this moment.

Senator COSTIGAN. Does your testimony refer exclusively to the cotton textile industry?

Mr. RICHBERG. No; it does not.

Senator COSTIGAN. You are referring to the whole field of the codes?

Mr. RICHBERG. Yes; and let me give this statement of increase of employment and pay rolls in a group of major industries, and I think this is really worthy of not only being put in the record, but of being read aloud.

This is from June 1933 to December 1934, and I want to point out that is not, in December 1934, a high mark of wage increase and employment increase, but as a matter of fact that June 1933 was a far higher mark than in March 1933.

One of the causes of the large rise in employment and payrolls in the month of June 1933 was the rush of manufacturers and producers to get goods out in anticipation of increased prices under the codes.

While I am stating that, may I say to the Senators, so that our subsequent anxiety will have no misunderstanding, that one of the factors of the present uncertainty as to the matter of the form and continuance of the N. R. A., will very definitely slow up trade and industry, because if there is a possibility of restrictions being removed

which are preserving wage levels, and thereby to that extent holding up prices—if there is a possibility of those restrictions being removed in the individual trades, or many trades, the inevitable result on the business world is a holding off of placing orders.

So, if we at any time may urge upon you the desirability of action in this matter, I should like to state at the present time it is just a question as to how long this retarding effect of uncertainty as to the application of the N. R. A. in the future shall hold back business, because this is a very definite factor at the present time.

Senator LA FOLLETTE. It is also a fact that the resistance and delay which the industries have put up to the agreeing upon codes was because they were then in a position to run their plants any hours and to pay any wages, and that was in order to build up the industries in anticipation of the time the code would go into effect.

Mr. RICHBERG. Yes; and the prices would go up; that is correct.

Senator LA FOLLETTE. Isn't that one of the reasons why the steel producers, for instance, bucked the code and could not come to any agreement during all of that period of time, during the summer, because their plants were running full blast during that time building up an inventory?

Mr. RICHBERG. I cannot say what their motives were, but I can see what the effect was.

Senator LA FOLLETTE. Isn't that the effect?

Mr. RICHBERG. The effect at that time clearly was that when the industries held off on the codes and built up inventories, then when the codes went into effect with improved conditions, it meant higher labor costs, and they would profit by that process.

Senator LA FOLLETTE. And they did profit by it.

Mr. RICHBERG. They did, and that was one of the main reasons for the launching of the President's Reemployment Agreement, so as to immediately blanket all industry and trade with requirements for definite increases in wages and improvement of conditions, so that there could be no advantage in holding back any longer in presenting and considering the code.

Senator LA FOLLETTE. And, on the other hand, is it not fair to say with this situation that confronted the administration, the N. R. A. at this time was also a factor in persuading them to accept codes which today they probably would not want to go on the witness stand today and defend?

Mr. RICHBERG. As a matter of fact, the pressure which was brought as the result of the President's Reemployment Agreement was undoubtedly a strong factor in bringing about codes.

Senator LA FOLLETTE. You did not get my point. The point is, these big industries, especially were running full blast to build up inventory, which produced pressure upon the administration of the N. R. A. to get codes agreed to in order to prevent that.

Mr. RICHBERG. That is quite correct.

Senator LA FOLLETTE. As a matter of fact, that was a factor in the beginning of the codes that were agreed to so far as a lot of these big basic industries are concerned?

Mr. RICHBERG. As a matter of fact, the pressure of this situation was responsible for the approval of many codes in which there might be erious doubt of the wisdom of many of the provisions.

Senator LA FOLLETTE. Precisely. In other words, is it not a fact that if you had to make these codes today you would not have made the kind of codes you made during those hectic days, and that having made that kind of codes you are embarrassed all of the way through the administration of this act in an attempt to get a code which you could defend?

Mr. RICHBERG. To some extent that is so, particularly in certain instances that could exert a very heavy resistance, I might say, to the improvement of code conditions. On the other hand, the codes have been in a steady process of improvement.

I can cite one I have had something to do with, and that is the steel code, which in its original form was frankly a thoroughly unsatisfactory code, but was accepted on two bases; first, that a trial should be given to active operation under Government knowledge with complete statistical information, such as we had never had before, and that we should not deny to the labor engaged in the industry the manifest benefit which we could get, and did get, out of the reemployment of 75,000 men, with increased pay rolls of $7,500,000 a month, with a reduction of hours to an extent never before known in the steel industry.

We did not feel it was worth while for an academic theory of a possible improvement of the code, to postpone the actual beginning of those benefits. We did feel that the code itself contained many provisions of dubious wisdom.

Senator LA FOLLETTE. You would not describe them all as academic?

Mr. RICHBERG. No; I said for an academic theory of improvement, because, as a matter of fact, we could only improve it to a certain degree as a voluntary code.

Senator LA FOLLETTE. You said there were provisions in it of dubious wisdom.

Mr. RICHBERG. Yes.

Senator LA FOLLETTE. You would not classify those as being academic?

Mr. RICHBERG. I was not referring to the provisions. I was saying the theory it could be improved was academic because we lacked legal power to enforce immediate improvement.

Senator LA FOLLETTE. As a matter of fact, the whole thing has proceeded on a kind of horse-trading basis, and the fact of having proceeded on a horse-trading basis, where you traded fair trade practices for labor provisions which you would not perhaps like to defend, and once having established that as the basis of procedure now, when you come to try to improve any of these codes, the people with whom you have been dealing say, "Well, now, wait a minute; we traded this for that, and if you want to change this now, you have got to give us some other concession somewhere else."

Mr. RICHBERG. I do not know of any way of dealing with the industrial problems involving a multitude of conflicting interests, that cannot be called trading. Compromise is not a pleasant word under some circumstances, but it is fundamental of governmental and political science.

I do not know of any method of dealing with conflicting interests except to compromise and trading in the manner in which it will produce the greatest benefit for the greatest number.

That is the process we have embarked upon, and it would not be wise to attempt to change the structure, because it is likely you will destroy whatever advantages you are to get out of it.

Senator LA FOLLETTE. It seems to me one of the basic difficulties in the whole situation has been the fact that I understand there has been a tendency to trade labor conditions for fair trade practice conditions, and it certainly is a function of this committee to find out whether "David Harums" have all been on the other side of the fence.

Mr. RICHBERG. May I put it this way, because I think it is entirely fair? It is not merely a question of trading.

Senator LA FOLLETTE. You said it was.

Mr. RICHBERG. I say it is not merely a question of trading, but this is an absolutely legitimate bargain I would like to present to you. You ask a man to increase his costs by 30 percent. He says I am facing a demoralized market with my bad competitors taking my business with cut-throat competition of every kind, how can I increase my costs 30 percent under those circumstances? You say, What is the cause of the demoralized market, and he says it is because of these business practices which are rife in this industry; if you can eliminate those business paractices I can meet your increased costs.

That is not horse-trading, that is plain budget-balancing.

Senator LA FOLLETTE. On the other hand, is it not a fact there has been a lot of horse-trading?

Mr. RICHBERG. There has been, I agree with you.

Senator LA FOLLETTE. It has been trading of fair trade practices and the labor provisions of these codes. Now, while we are on this subject, I would like to go a little further and see what kind of trading has been the net result. One of the objectives of the Industrial Recovery Act is found in section 1, first to promote the fullest possible utilization of the present productive capacity of the industry, to avoid undue restriction of production, except as may be temporarily required to increase consumption of industrial and agricultural products, or increased purchasing power, to reduce and relieve unemployment, to improve standards of labor and otherwise rehabilitate industry and conserve natural resources.

I note the recent report of the Research and Planning Division of the N. R. A. shows unemployed in December 1934 of 10,830,000, as against 10,613,000 in December 1933, so that as far as that particular objective is concerned, the net result of the negotiations, if you object to my term "horse-trading," has not gotten us very far along the road which Congress evidently intended when it set up the act.

Mr. RICHBERG. You had an increase of 3,000,000 before December 1933, which you have disregarded, and that is a healthy sum.

Senator LA FOLLETTE. That is a good sum, but, as a matter of fact, you know in the past, and during the last year we have not made much progress in that direction, have we?

Mr. RICHBERG. As a matter of fact, the effect of the blanket agreement was to take a large measure of effort which reduced unemployment, so that the major effect of codification upon employment had taken place by December 1933, except so far as there was a general increase of business which would follow later.

Senator LA FOLLETTE. My point is, you have been making the contention that you had the power and you are in position to improve

the codes which were originally adopted, and which did not meet the proper standard, and my point is that during the past year, so far as your objective toward reemployment is concerned, we have made very little progress.

Now, I would like to quote some figures further about what has happened to wages, because it seems to me if you are going to carry out this provision of increasing purchasing power, we have got to get a better redistribution of the income that is produced.

Now, here are figures from the Bureau of Labor Statistics which show that factory workers for 25 industries averaged $20.71 per week in December 1934, as against $18.50 per week in December 1933; that common labor averages 40 cents per hour in December 1934 as against 38 cents per hour in December 1933.

So that, during the past year in those 25 industries, if they are typical industries, we have not made very much progress in the readjustment of these codes, toward the objective of a greater increase in the purchasing power of those who are employed.

Mr. RICHBERG. May I lay a figure right alongside the ones you gave, because it shows different months, from June 1933 to June 1934 and in those months manufacturing industries' pay rolls rose from $96,000,000 to $132,000,000 a week, which is 37½ percent, and I regard that as a very substantial gain.

Senator GORE. How much of that increase accrued prior to the adoption of the code, and was due to the rush to produce goods before the codes went into effect?

Mr. RICHBERG. Practically none of it, because that is a comparison of June 1934 with June 1933.

Senator LA FOLLETTE. But your statement concerning the increase in factory pay rolls is not comparable with the average weekly earnings which is what I was talking about, because that does not take into account the factor which is most important so far as purchasing power is concerned, namely, how much is in the pay envelop of the worker at the end of the week.

Mr. RICHBERG. What I was trying to explain earlier was that the greatest effect of this program had been from the labor side to maintain weekly earnings, while at the same time creating employment for several million workers.

Senator BLACK. How do they get that increase?

Mr. RICHBERG. Largely through the shortening of hours, the stimulation of business by the elimination of destructive trade practices.

Senator BLACK. In your judgment, how many were reemployed by reason of the shortening of hours?

Mr. RICHBERG. I cannot divide it up. I can simply say between four and five million people have been reemployed, but as to the percentage of that ascribable to the codes, it I was going to be as closely accurate as I could, I would say probably 3,000,000.

Senator BLACK. Due to the shortening of hours?

Mr. RICHBERG. Due to the shortening of hours and the general effect of code provisions.

Senator BLACK. In your judgment, if you have any knowledge, how much has been due to shortening of hours? I think you gave some figures in a speech recently.

Mr. RICHBERG. I have some figures I can give you, I think. I don't think I can give you the figures at the moment, however.

Senator BLACK. You can furnish them?

Mr. RICHBERG. Yes, indeed.

Senator GORE. The N. R. A. went into effect on the 16th of June, and some time must have elapsed before the codes were adopted.

Mr. RICHBERG. That is correct.

Senator GORE. When was the textile code adopted?

Mr. RICHBERG. June 27 hearing; code July 9.

Senator GORE. Could you give a schedule showing how the other codes followed?

Mr. RICHBERG. That schedule is prepared and available, I think, in the United States Government Manual. I can give you a complete transcript of that.

Senator GORE. Do you know how many were adopted prior to, say, LaborDay that year?

Mr. RICHBERG. Prior to September, then?

Senator GORE. Yes.

MP RICHBERG. What I tried to point out a minute ago was that the President's Reemployment Agreement went into effect August 1, which covered 16,000,000 employees.

Senator GORE. That is the blanket code.

Mr. RICHBERG. Yes; the blanket code.

Senator HASTINGS. I would suggest you might get at it by taking some other month after June, for instance, July 1933 and July 1934.

Senator GORE. You say pay rolls increased 37 percent between June 1933 and June 1934?

Mr. RICHBERG. That is correct.

Senator GORE. A part of that was due to additional wage earners being placed on the pay rolls?

Mr. RICHBERG. Precisely.

Senator GORE. Now, as a general rule, when hours per day were cut down, the wage-earners continued to receive the old day's wage for the new day's work?

Mr. RICHBERG. As a general rule?

Senator GORE. Yes.

Mr. RICHBERG. Quite the contrary.

Senator GORE. As I understood, if they were working 8 hours a day and 6 hours was substituted for the 8 hours, they continued to receive the 8 hours' wages for the 6 hours' work?

Mr. RICHBERG. Pardon me, Senator Gore, I misunderstood the form of your question. On the whole, the wage was maintained—the daily or weekly wage, that is correct.

Senator WALSH. Except those on piecework?

Mr. RICHBERG. Yes, sir; usually including piecework.

Senator GORE. Hourly wages were increased?

Mr. RICHBERG. Yes.

Senator GORE. That increased the wage-earners' daily earnings. Have you considered what effect that had on his daily output?

Mr. RICHBERG. Of course, that would be a matter that could only be determined in the individual industry, by reports from those industries. As a matter of fact, production has increased very heavily, and you have every claim made for that, from the fact efficiency has been increased to the fact the men are being worked harder.

Senator GORE. It is partly due to the fact more men have been employed. You say three or four million have been employed, and

that would account for a good deal of the increase. I do not know whether it would account for the percentage you have stated, but what I want to get at now is its effect on the efficiency of the individual laborer in the industry, and the effect on the labor cost per unit of output.

Mr. RICHBERG. That could only be ascertained industry by industry, because it would vary enormously, and there are a great many figures on it.

Senator GORE. There is not any doubt but what the cost per unit advanced?

Mr. RICHBERG. In some instances.

Senator GORE. The increase of cost necessitated an increase in price as a rule, did it not?

Mr. RICHBERG. It all depends upon the percentage of labor cost.

Senator GORE. There has been a remarkable increase in price. I remember cotton fabrics went up, some of them, from 6 cents a pound to 16 cents a pound, or nearly so. This brought about an increase in prices, there is no doubt about that, and did not that increase in prices tend to cut down consumption of the articles?

Mr. RICHBERG. It does not tend to cut down the consumption when you put several million customers in the field who had not been there before.

Senator GORE. I do not say it cut down consumption, it may have been helpful enough to overcome the tendency to cut down, but you will admit that an increase in price tends to curtail consumption?

Mr. RICHBERG. As a rule, yes; but that will always vary.

Senator GORE. What we needed in this country was increased consumption, putting men to work and women to work.

Mr. RICHBERG. It was stated in March 1933, if we did not have increased prices we would have a completely insolvent industry, and I say we needed both. There was an absolute demand to increase prices as being essential to private industry.

Senator GORE. We put on a campaign here on the theory we had to increase the prices of farm products that were disproportionately low; that the price of what the farmer sold was proportionately low as compared with the prices the farmer bought, and we started out on a campaign involving the processing tax to raise the price of farm products more rapidly than the price of industrial products; is that true?

Mr. RICHBERG. That is true, and with great success.

Senator GORE. On this whole scheme of cutting down hours of labor and compelling a larger daily wage, and also the larger cost per unit and the larger price per unit of output, did not those two forces work exactly in opposition?

Mr. RICHBERG. No; according to the statement of the Agricultural Adjustment Administration, the N. R. A. did increase industrial wages and that it was necessary to protect the market for agricultural products, and the effect today has been that despite the increase of industrial prices, the farmer is buying more, and substantially more. He is buying on the same basis as in 1910 to 1914.

Senator GORE. When you cut down from 8 hours to 6 hours, the wage remaining at the wage of the 8 hours work, I suppose when you cut 3 men down to 6 hours, it created a new 6-hour day's work for some new man that did not have any purchasing power at all.

Would not that have provided the same amount of purchasing power for that man for himself and family, and would have increased the output, and would not have increased the cost per unit, and would not cut down the consumption?

Mr. RICHBERG. It probably would have resulted in preventing the development of some of the strongest factors in industrial recovery. For example, the automobile industry which has been almost the leading industry in the industrial recovery field, in recent months there has been made possible with improved general standards of living, and such, the purchase of the lowest-priced cars——

Senator GORE. Would you say, Mr. Richberg, that is an unmixed blessing?

Mr. RICHBERG. I think the spread of easy individual transportation in the United States, more than anywhere else in the world, has probably been one of the most significant examples of the improvement of benefits of civilization. It makes it possible for people to live in the country rather than in the congested parts of the cities.

Senator GORE. That is true, and I want to see them have the ability to buy them, but this is a country where there are 10 million people unemployed, yet they are able to buy 4 million new cars in a year, and many of the people would not be able to run them if they were given the cars.

Senator BLACK. Mr. Richberg, may I ask a question about the automobile being an unmixed blessing. Do you know many people who are able to own them, in political life and private business, who are not anxious to get automobiles, and who do not ride in automobiles?

Mr. RICHBERG. It seems to be the universal desire.

Senator BLACK. Do you have one?

Mr. RICHBERG. I have one; yes, sir.

Senator BLACK. Do you regard as a blessing the cars?

Mr. RICHBERG. Yes; I regard it as a blessing.

Senator GORE. Let me state this, I am not going to be driven from the field thus easily. We have 24,000,000 cars in the United States, and every person in the United States could take an automobile ride at one time. Now, I am quoting from a member of the Federal Reserve Board, and I say that the people of Texas one year, I think it was 1932, expended on automobiles, parts, equipment, gas and oil, $700,000,000 more than all of the farm produce marketed in that State in the market places. One county in my native State of Mississippi spent $400,000 more in one year for automobiles than every dollar's worth of farm produce brought into the market places.

Mr. RICHBERG. You will admit, Senator Gore, that the consumption of oil and gas has been of some benefit to Texas and Oklahoma?

Senator GORE. There is no doubt about that, yes; and that is why I say there are people running cars in this country today—and the American Automobile Association estimates that it costs 7 cents per mile to run a car—there are people that own a car today that are not able to run it, if it were given to them.

I have understood some of the automobile companies were concerned because some of the people in the Western States, when they got this "turn-under" money, and their other rentals, instead of paying their debts, bought automobiles.

Mr. RICHBERG. Mr. Chairman, may I ask if you want me to read into the record this table of pay rolls? I think it might be a better basis of discussion than otherwise.

Senator BYRD. Mr. Richberg, I understood you to say the 3,000,000 people that had been reemployed, that the N. R. A. was primarily responsible for that?

Mr. RICHBERG. That was my best estimate.

Senator BYRD. What credit do you give, if any, to the $3,300,000,000 Public Works program that has been in effect since June 16, 1933?

Mr. RICHBERG. The figures under the Public Works program are not included in the figures I have referred to, it is a separate figure, and it is not counted in the so-called "10,000,000 unemployed"; that does not exist today, as a matter of fact.

Senator KING. You say there are 10,500,000 unemployed?

Mr. RICHBERG. I say this 10,500,000 unemployed; that, as a matter of fact, does not exist, in my judgment, because that allows for a lot of assumptions.

As an example, on the public works; it is customary to set up so many unemployed, when, as a matter of fact, some of those people are being employed, and it is hardly an accurate figure.

Senator BYRD. Would it not be well for you to get the Secretary of Labor to correct those figures?

Mr. RICHBERG. That is not a criticism of the figures, but of the interpretation of the figures. The figures apparently mean there are that many idle people, when, as a matter of fact, there are many of those people who are employed.

Senator BYRD. Miss Perkins did not testify to that effect, as I understand.

Senator COSTIGAN. You will admit there are some unemployed?

Mr. RICHBERG. I will; millions.

Senator BYRD. Miss Perkins said the actual unemployment was greater than the figures shown, because those employed part time, 1 or 2 days a week, were not included in the figures she gave.

Mr. RICHBERG. Those employed part time are not included, but as a matter of fact there are included in that a great many that have part-time employment.

Senator COSTIGAN. In the figures you gave, are you dealing with the total annual increase of employment, full time or part time?

Mr. RICHBERG. Substantially full employment was what I was referring to.

Senator BYRD. I want to know what benefit you give to reemployment that has occurred in the public works.

Mr. RICHBERG. What I want to say is this, I think probably it is a fair estimate, although merely an estimate, that for every man employed in the public works, the indirect effect is at least the employment of another man in private enterprise. It is hard to make any generalization, but I think that is fair.

The public works employment has risen from 250,000 employed to 670,000, I believe at the peak, and I believe down to about 500,000 now, in broad figures. You may say for each man so employed you can assume there has been stimulation in employment in private enterprise of another man. So I think it will be entirely proper to give credit to the public works for that same amount of employment, but that is not a large amount of employment over this period.

Senator BYRD. You claim 3,000,000 employed under the N. R. A., and that is the total number I understand have been employed. What proportion are credited to public works?

Mr. RICHBERG. No; something like 4 or 5 million employed.

Senator BYRD. Your figures do not agree with the figures of the Secretary of Labor, and those figures, as I understand it, only give employment to 3,000,000.

Mr. RICHBERG. I am sorry we haven't those figures, and one trouble we have today is that these figures as generalizations are probably valueless, until you determine what they are from. I made a report after a careful investigation last August, which has been published in an official document, available to anyone who wants to have it, that there was an increase of approximately 4,120,000 people by June 1934, over the low figure of March 1933.

Senator BYRD. You think your figures are more reliable than the figures of the Labor Department?

Mr. RICHBERG. Our figures are based on the figures of the Labor Department, and it is a matter of interpretation.

Senator BYRD. As I gather, you estimate the employment of 500,000 by reason of the Public Works program?

Mr. RICHBERG. Perhaps on an average, about that.

Senator BYRD. That is 5 percent of those that are unemployed.

Mr. RICHBERG. You mean of the 3,000,000?

Senator BYRD. Of the 10,000,000 now unemployed. I want that information because we have now pending a Public Works bill that is claimed will relieve unemployment, and it is of interest to know the effect of the past Public Works bill.

Mr. RICHBERG. I have made the statement right along that you could safely feel one man put on public works would be responsible for one man in private employment.

Senator BYRD. You claim that one man is put on private employment for each one on public-works employment, making an average of 500,000 total reemployment?

Mr. RICHBERG. I said that public-works employment had started at 250,000 roughly when it got into operation. As a matter of fact, for December 1933, when I was giving this figure of approximately 3,000,000 increase, the effect of the public works had been very limited up to that time because they were slow in starting. I cannot give you the exact effect, but I did say from the time the program began to operate up to the present time it had varied from 250,000 up to 670,000 and back to 500,000, and you could figure the same number of men employed in private industry, because of this increase.

In the same way, let me say that straight relief expenditures account for the necessary production and distribution of commodities to support those families.

Senator COSTIGAN. In other words, you had an increase, direct and indirect, in employment of approximately 1,200,000 or 1,300,000 to public works?

Mr. RICHBERG. I would not say it would be that much.

Senator BYRD. As to this public employment, there were periods when it did not run as great as that.

Mr. RICHBERG. It may run to a total of 1,300,000 due to the public-works employment.

Senator GORE. It would depend on the efficiency of the people employed in the public works?

Mr. RICHBERG. It is not a question of efficiency, but it is the fact those people have to eat and have shelter and those things.

Senator GORE. And as we assume, those on relief will have to eat anyway?

Mr. RICHBERG. That is the point I made, that the straight relief would cause more employment.

Senator GORE. I want to get this in the record at this place. I tried to do it the other day, but did not. I know a public official very well who had charge of the construction of 1,200 projects on Public Works. They made their estimate of the labor cost of those projects in advance and figured it at $10,000,000, that being based on labor statistics. When the work was done the labor item amounted to between $36,000,000 and $38,000,000, and he told me it took nearly 4 men to do the estimated work of 1 man. I offer that here for its bearing, if it has any, on the McCarran amendment.

Senator BYRD. As I understand, Mr. Richberg, you include in the approximate million employed by Public Works, likewise the expenditure for relief, because, of course, that increases employment also?

Mr. RICHBERG. In order to be perfectly clear, I was adding to my own statement something I should have brought in. I mentioned that relief expenditures also had a stimulating effect.

Senator BYRD. Have you considered those also?

Mr. RICHBERG. I have not considered those, and I do not know the extent to which relief expenditure can be reflected in private employment.

Senator BYRD. You are not certain this million you referred to would be merely on Public Works?

Mr. RICHBERG. It would be impossible to separate them. I think it would be difficult, because it would depend on the manner in which the expenditures were made and the manner in which it was expended.

Senator HASTINGS. In line with your statement that Public Works employment of one man, in your judgment, will give employment to another man, on the materials furnished and such, I desire to call attention to the witnesses appearing before the committee on the Public Works appropriation of $4,000,000,000, in which they estimated that $2,100,000,000 of it would go for direct employment and $1,900,000,000 for materials. That being true, your statement cannot be true, because certainly all of the cost of materials, which is less than the cost of labor, is not all of it the cost of labor in producing those materials.

Mr. RICHBERG. I think possibly you misunderstood me. I did not mean 1 man was employed because of materials; but I meant, as an average, it had been estimated that for 1 man put on Public Works, the result in the total, both of the purchasing power of that man and the material processed, would be at least an increase of 1 person in private employment. As a matter of fact, the total amount has varied considerably, according to the type of project and the method of expenditure and the proportion of expenditure to the individual.

This is only in the nature of an estimate, and I have no direct evidence except for the fact those far better equipped than I have repeated the estimate as being perfectly safe, and I suggested it because I wanted to be fair in my statement of employment under the N. R. A.

Senator HASTINGS. Under the plan recommended by the Adminsitration, they propose to take off of relief persons getting $25 a month, on the average, and then reemploy them on Public Works on an average of $50 per month, so that the increased purchasing power from that particular group would only be half of $2,100,000,000. That is true, is it not?

Mr. RICHBERG. I will assume your figures are correct.

Senator HASTINGS. Those are the figures given. So I still do not understand how it can be hoped that by expending $2,100,000,000 a month to 3,500,000 people for 1 year, at the rate of $50 per month, will give employment to three and a half million people.

Mr. RICHBERG. May I say, I would have been delighted to attempt to prepare on that subject, but I am not really prepared to testify on the subject of the effect of the Public Works appropriation. I made my statement here for the purpose of not being put in the position of unfairly recording a factor that would enter into private employment.

The CHAIRMAN. I would like to make a statement to the committee, because we have to adjourn in a moment. I would like for the committee to furnish the chairman someone to make a motion to appoint a subcommittee on procedure.

Senator GEORGE. I make a motion the Chair appoint a committee of seven on procedure, the Chair to be included as chairman of the committee.

Senator WALSH. Six and the chairman.

Senator GEORGE. Six members and the chairman.

Senator WALSH. What is the purpose of the committee?

Senator GEORGE. On the procedure of the committee.

The CHAIRMAN. On the procedure of the committee, so that we can save the time of the committee; but that in formulating its plans, the plan of the subcommittee shall be reported back to the full committee for the approval of the full committee.

Senator LA FOLLETTE. I have no objection to that, but I assume that Mr. Richberg will be back so that we can conclude some questions we have.

The CHAIRMAN. Mr. Richberg will be back tomorrow, and at that time you can put in the record the statement you have been trying to put in.

Senator GORE. I want to ask Mr. Richberg if he can tell us where we can get any documents, which will show the salaries paid these various administrators and the cost of administration.

Mr. RICHBERG. I can get the entire material and put it in the record.

The CHAIRMAN. The committee will recess until 10 o'clock tomorrow morning.

(Thereupon, at 12:05 p. m., the committee recessed until 10 a. m., Saturday, Mar. 9, 1935.)

(And thereupon, by further direction of the chairman, an adjournment was taken to 10 a. m., Monday, Mar. 11, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

MONDAY, MARCH 11, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to adjournment, at 10:10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison, chairman, presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Connally, Gore, Costigan, Bailey, Clark, Byrd, Lonergan, Black, Gerry, Couzens, Keyes, La Follette, Metcalf, Hastings, Capper.

Also present: Mr. Blackwell Smith, acting general counsel National Recovery Administration; Mr. Leon Henderson, economic adviser, National Recovery Administration.

STATEMENT OF DONALD M. RICHBERG—Resumed

The CHAIRMAN. We will proceed with Mr. Richberg.

I might announce before we proceed that I have been advised by the Research and Planning Division that 3 or 4 studies on labor provisions and a general report by the Research and Planning Board has been filed with the clerk of the committee. It is too cumbersome to put in the record, but it is here if anybody wants to read it.

These booklets duplicate materials already furnished in subject-matter but go into more detail and can of course, be obtained by any member of the committee who wishes to ask the clerk for them.

There will be in the hands of the clerk during the morning alphabetically arranged subject-matter indexes for each of the general booklets of information originally furnished to the committee, that is: (1) The condensed summary; (2) the booklet of charts; (3) the booklet of tables.

Senator BLACK. May I ask if those additional ones are the reports made by Mr. Henderson, that is without having been condensed as they are in print?

Mr. BLACKWELL SMITH. They are not touched in any respect. They are the general studies as they were originally made.

Mr. RICHBERG. Senator Black, as I understand, the complete Henderson report—copies of them—have already been filed with the committee, as they were distributed weeks ago to the press and given wide circulation, and they are available, in addition to what you have already. There is a great deal of duplication between those volumes, but there is some material that is not found in one of them and is found in the other.

The CHAIRMAN. I would like to make this statement before we begin, so that it may receive the approval of the full committee. The subcommittee that was designated by the full committee on procedure has recommended to the full committee that following Mr. Richberg, Mr. Williams, the chairman of the Board, shall be called as the next witness, and then they will call Mr. Sidney Hillman, a member of the Board, and then Mr. Leon Henderson, the economic adviser and ex-officio member of the Board; Mr. Francis Biddle, chairman of the National Labor Relations Board. And, we have invited Mr. Clarence Darrow who worked with reference to this subject, and made certain criticisms and an analysis of this situation and filed a very elaborate report. I do not know whether Mr. Darrow's health will permit him to come, but his assistant who helped to prepare the matter was Mr. Lowell Mason, and we hope to have him before the committee.

Is that agreeable to the committee?

(No response.)

The CHAIRMAN. Without objection, that procedure will be followed. I may say that the subcommittee was unanimous in making that suggestion.

Senator KING. I would like to supplement the statement just made by the chairman to the effect that it looked to me, although I assented to that, as though we were trying, I will not say, bolster up Mr. Richberg and the organization, but we were proceeding from the theory that the organization must be heard thoroughly and completely preceding the hearing of complaints which might be made, and I regard it as important now that we should as soon as possible permit the testimony and bring to the committee, witnesses who have legitimate and valid complaints against the operation of the N. R. A., particularly in view of Mr. Richberg's statement last night, if the paper is to be believed, that the N. R. A. is such a beneficent organization that it is necessary to have it in order to prevent monopoly. It looks to me as though too much effort was there on the part of the N. R. A. and its officials to bolster up their organization.

Senator BARKLEY. In that connection, I suppose it will not be improper to suggest that where complaints are made by those not connected with the N. R. A. about matters that have transpired in the administration of the N. R. A. Act, the committee will reserve the right to call anybody who has any connection with the administration of it in explanation of any situation that might need further elucidation after the primary testimony has been given by those in the organization.

The CHAIRMAN. I may say, Senator Barkley, that of course this merely is the approach of the number of witnesses that are to appear. It was thought wise that there should be a committee on procedure so that the burden should not be placed on the chairman, and this is merely the beginning. I may say further that on this subcommittee, Senator La Follette was the one who made the suggestions in the subcommittee, or most of them. Some of them on it are critical, as I understand, of what has been done. Mr. Hillman, I think, of the Labor Board——

Senator KING (interposing). I do not think you can say that of Mr. Hillman.

The CHAIRMAN. Who is it that is on the Labor Board?

Senator KING. Mr. Biddle.

The CHAIRMAN. Mr. Biddle. And certainly from this Darrow report we can get the information to work on with reference to criticisms.

Senator KING. I would like to make one supplemental statement that in my view, because of the importance of this examination and the proper investigation, it should become necessary to obtain an investigator and counsel, and to assemble and correlate the data in order that it may be presented in an orderly and consecutive manner.

The CHAIRMAN. I may say for the benefit of the committee, too, that we were going to suggest that one or more experts be employed to correlate the various criticisms and charges, and so forth, and to report, and Senator George or Senator La Follette are to try to fine someone and bring the matter to the attention of the subcommittee, and we will bring it to the attention of the committee.

Senator BARKLEY. What are these experts to do?

The CHAIRMAN. They can go over a great mass of this Darrow report and other criticisms and I think it will be of a great deal of assistance to the committee. Not to question the witnesses, not to act as attorney, and so forth, but to assist us in the correlation of these matters.

Senator KING. I believe that we ought to have an attorney to question the witnesses after presenting the facts or after assembling the facts and correlating such data as may be material to the investigation.

Senator BARKLEY. Why not employ a new committee and let them do the investigating, and who are not members of the Senate at all.

Senator KING. I have no objection.

Senator BARKLEY. If the Members of the Senate are not competent to ask intelligent questions, we ought to abandon it.

Senator KING. An investigation such as should be made will consume much more time than we are able to give it, to conduct it in a comprehensive manner.

Mr. RICHBERG. May I at this time call the attention of the entire committee to the volume of material concerning complaints to be investigated if the committee desires it. I think perhaps these figures will be a little illuminating.

The cumulative number of field-office complaints received by the N. R. A. to February 16, 1935: Labor complaints, 118,400; trade-practice complaints, 31,667.

Senator KING. May I interrupt you right there? Weren't these the figures that you gave the other day?

Mr. RICHBERG. No; I did not give these at all.

Senator KING. Very well.

Mr. RICHBERG. These are cumulative figures. Out of those labor complaints, 97,000 are closed; some 64,000 being adjusted and no violations found in 32,000 cases, leaving on hand February 16, 14,586 labor complaints.

Out of the trade-practice complaints, 24,000 out of the 31,000 were closed. There were 17,000 adjusted, and 6,000 no violation, and on hand February 16 were 3,335.

I merely want to show to the committee the volume of investigation in which it may embark if it endeavors to cover one-tenth or one-twentieth of the amount of investigative work the N. R. A. has already done and satisfactorily closed.

Then I would like to point out as to results of those. In wage restitutions, there has been a great deal of misunderstanding as to the effectiveness of the enforcement of any of these codes. With 21,638 cases involving 90,000 employees, there has been a total amount of $2,224,380 in wage restitutions; that is in the field offices.

The wage restitutions through the code authorities with 2,900 cases involving 84,000 employees, wage restitutions of $732,268.

All that I wanted to point out to the committee, I think that you would realize in a moment, that if you set out to investigate the operations of the United States courts, for example, it would be very difficult to go into every complaint which has been filed in determining whether a just result had been accomplished within the time of the life of the members of the committee.

When you have an institution that functions in a similar way in the maintenance of industrial codes, disposing of a volume such as 114,000 complaints, for example disposed of, it is quite obvious that there must be thousands and thousands of persons who do not accept the results of complaints, who are still objecting and who are hashing over and over again the old complaints and old objections.

I do not want to indicate any desire on our part to suggest that the committee should not go into this matter to the full extent it desires; I simply wanted to point out the impossibility of the committee covering the entire ground of investigation which the N. R. A. has already covered, and to point out for that reason that we thought it pertinent to bring to the attention of the committee the broad results of the N. R. A. operations, inasmuch as the fundamental tests to be applied by the committee would presumably be upon the broad results of efforts and handling of a situation.

In that connection I would like to have the opportunity to present a few figures which apparently would be in the nature of a complete revelation, not only to the members of the committee, but to the members of the press and the general public, as to employments and increase of pay rolls directly under the N. R. A. codes. We have in the tabulation, the employment in March 1933 in the codified industries, the pay rolls, the high points of employment and pay rolls since March, and the present.

Senator COUZENS. And the dividends?

Mr. RICHBERG. As to the dividends, Senator, that is another story about which I have also asked to have some very interesting information which will also be more or less of a revelation as to the facts of the situation. We had, for example, the statement widely quoted, taken from Mr. Henderson's report to the effect that interest and dividends in the last year were 50 percent more than in 1926. It was not pointed out that corporate profits were 32 percent of 1926, which was in another table in the same document.

In other words, the maintenance of interest and dividends does not mean and has not meant the maintenance of profits, because profits according to our best reports during the year 1934, have been less than one-third of the base year of 1926, whereas wages on the other hand, have gone up since the recovery began, in a much faster scale in money and amount than any profit increases.

The difficulty with a comparison of 1926 with the present time, and that is the reason these statistics are so misleading, is that following 1926 was the greatest era of expansion in securities in the history of

this country, and in the succeeding years there was something like an increase of 13 billion dollars in security issues.

Senator BARKLEY. And insecurity issues.

Mr. RICHBERG. Yes; and insecurity issues.

A large amount of that was credit expansion meaning an increase in interest payments. The choice after 1929 was a national bankruptcy or an attempt to bolster up those obligations so as not to have wholesale foreclosures of the institutions throughout the country upon which the general welfare depended. Whether that policy was wise or ill, it was the policy followed under the previous administration and under the present administration of supporting the credit structure so far as possible, and so far as it seemed sound. That meant necessarily maintaining the interest charges.

The dividends that were paid in the meantime were in considerable part paid out of surplus. As to whether the system is wise or not is another question entirely, but the point of what I am trying to bring out is that profits have not been increased or earnings disproportionately to the increase in wages.

As a matter of fact, the rise in wages and labor income has far exceeded any rise in the actual profit earnings. Of course, the kind of a statement which I have just quoted gives us a totally false impression and leads to the assumption that you have a situation in which by control over prices, large profits are being made at the expense of labor and consumer.

As to the increase of wages, the only way apparently that the facts can be placed before this committee in a way to stop continual misunderstanding and continual misrepresentation throughout the country is in the detail. We have said over and over again the plain facts that between three and four million people have been employed under the codes. Apparently the particular statement of the statistical fact is subject day by day to a perfectly bland denial, by newspaper and editorial writers or what not, that there has been any increase of employment.

We propose, if the committee will allow us, to put into the record today, industry by industry, the actual increase in employment and pay rolls. We cannot have complete records because of the lack of adequate information regarding all of these far-flung industries. We can give you the best we have.

Senator BYRD. When do those records start; what date?

Senator BARKLEY. Do you want to detail that statement before the committee, or just file it? It seems to me that it ought to be gone into by you in your testimony and not simply filed as an exhibit and printed, which somebody may or may not read.

Mr. RICHBERG. I would like to pass it around so that the committee can have in front of them the information, and I would like to call attention to what these figures show, because I think it is extraordinarily valuable information.

Senator KING. Are not many of the figures that you purpose now giving, to be found in the price and price provisions in the code booklet, together with another report——

Mr. RICHBERG (interposing). Wages and hours.

Senator KING. Yes; which has been submitted by your organization?

Mr. RICHBERG. No. These figures in the form of the number of employment and the amount of the pay rolls are not found anywhere in the material submitted.

Senator BYRD. I asked the question when the figures begin? What date?

Mr. RICHBERG. They begin with March 1933.

Senator BYRD. When did the N. R. A. become operative?

Mr. RICHBERG. The N. R. A. began to operate under the law in June. This is not an effort to show anything, Senator, except what has happened.

Senator BYRD. I understand that, but you are making the claim now and it has been made repeatedly before, that the N. R. A. has been responsible for the reemployment of approximately 4 million people.

Mr. RICHBERG. Three million.

Senator BYRD. You take that information back from March 1933, prior to the time the N. R. A. became operative, and by our own records——

Senator BARKLEY (interposing): You do not claim, as I understand it, that the N. R. A. was responsible for anybody being employed prior to the time when the N. R. A. went into operation?

Mr. RICHBERG. I will say this, Senator, that for a month before the N. R. A. went into operation, at least, the N. R. A. was almost wholly responsible for a very rapid increase of employment, because factories were working night and day to get out goods before the increase of wages and the shortening of hours anticipated under the codes. There was no question about that in the business world. No one who is familiar with the conditions will question it.

Senator BYRD. As a matter of fact, the N. R. A. did not really become operative until the fall of 1933.

Mr. RICHBERG. The N. R. A. became operative in the cotton textile industry, for example, on July 9, 1933.

Senator BYRD. There were many industries that did not have codes for many months.

Mr. RICHBERG. And the President's Reemployment Agreement went into operation August 1, which blanketed practically all of the industries.

Senator BYRD. What I want to make clear is this, in that connection: I am not anxious to rob the N. R. A. of any credit for what they have done, but I want to make clear to the committee as a part of the record that the 1,370,000 people, by your own record here, contained in the report of the National Industrial Recovery Act to February 1935, that 1,370,000 people were reemployed between March 1933 and June 1933. And the N. R. A. was not operative then. The N. R. A. cannot claim credit for that reemployment of 1,370,000 people.

Mr. RICHBERG. I am afraid, Senator, we really have honestly to claim credit for part of it. I do not think there is any question about it. I think the Congress of the United States can claim credit for a part of that, because it had under consideration various measures, including the N. R. A., for the purpose of increasing prices, wages, and so forth.

Senator BYRD. Were there not certain forces of natural recovery entitled to some credit?

Mr. RICHBERG. I do not know what forces of natural employment are.

Senator BARKLEY. Natural forces of recovery is what the Senator said.

Mr. RICHBERG. What I am saying is that, as near as I see, employment results from the actions of human beings. The fact that it is organized action instead of disorganized and accidental action does not seem to me to make it any less natural.

Senator BAILEY. The fact was that there was a great deal of anticipation which reflected itself in that way?

Mr. RICHBERG. That was, I thought, universally acknowledged.

Senator CLARK. Mr. Richberg, was that entirely due to the mere proposal of the N. R. A.? How much credit would you allocate to the Black 30-hour bill which was actually passed by the Senate before the N. R. A. was actually thought of?

Mr. RICHBERG. The passage of the Black bill and the proposal of the N. R. A., and the A. A. A., all looking toward price increases, necessarily put business into the markets more rapidly to take advantage of low costs.

Senator BYRD. Let me ask you this question then. If the N. R. A. is entitled to the credit of the reemployment prior to the time that it became operative, how do you account for the fact that in May 1934, we had the peak of unemployment of 9,000,000, and that since then we have added a million of unemployed, although the N. R. A. has been in full operation, and likewise the P. W. A.; yet day by day now we are adding to the unemployment of the country, by your own records.

Mr. RICHBERG. Senator, I did not want to go into that employment record too early, but I would like to point out to the entire committee something which is not apparently understood in these figures and which is not ordinarily recognized.

The unemployment figures show a set-up which I personally do not agree with, that way of setting it up; they show a continuing increase in what is called available employment, at the rate of some 440,000 for the year. It does not show that you have not added more men because the figure of unemployment does rise. As a matter of fact, you may be increasing the number of men put on work constantly, but not catching up with this theoretical assumption that there are so many additional persons to be employed.

The difficulty with the figures quoted yesterday, for example, as the Senator called my attention to the comparison between December last year and this year, as Senator La Follette did. As a matter of fact, if you look at the number actually gainfully occupied, there are more this December than there were last December, but if you add artificially 400,000 people to those that you think ought to be gainfully occupied, then you find that there are more unemployed. As a matter of fact, more people are working.

Senator BYRD. Mr. Richberg, the unemployment as compared with May 1934 and the unemployment now shows a difference of a million. You do not contend that a million people have come into the employable age since May 1934?

Mr. RICHBERG. No, Senator; but you could get a very good example of that, which I think the committee should also see. That is the constant misrepresentation of the exact situation you get by these unemployment figures. In the height of the season of the greatest amount of employment, you get an accumulation of all of

the seasonal groups. There you have your lowest unemployment and your highest employment. In the depths of the seasonal employments, you get the reverse of the picture, but in the meantime, what had happened? You have employed during the automobile season, several hundred thousand workers. When those workers are idle, and you put them as unemployed, at the same time you are employing another group of workers in another line of activity. Previously it used to be the farm work in the summer.

The textile strike, for instance, last fall, with hundreds of thousands out of work, and at the same time you do not see that reflected in any increased unemployment. Why? Because other groups had come in. If you add together the seasonal employees and count them as people who have been employed during the year, and in the normal times they are the ones who are employed only part of the year, as a matter of fact, a distinct fraction of your unemployment problem disappears, and that is the reason I said yesterday that it does not exist. The statement that so many millions are unemployed is not a statement of a fact unless you begin to interpret it by saying you mean at that particular day they are unemployed, although perhaps the very man you count as unemployed has had 8 months' work during the year.

Senator BYRD. Don't you get your same figures of 4,000,000 that have been reemployed from the same figures that you have as to the unemployed, because your statement here on page 31 of your report shows exactly what has been reemployed, so you claim, by the N. R. A.

Mr. RICHBERG. That is precisely so.

Senator BYRD. Then your own figures are not correct, in your judgment?

Mr. RICHBERG. Senator Byrd, that particular figure was taken from that comparison of employed persons. In the first place, I am pointing out the distinction between employed and unemployed. In the second place, when we refer to employment under the codes, we did not take that figure. We took as a matter of fact a census of employment under the codes which we got from the industries, over the period in between, and that is where I arrived at the figure of approximately 3,000,000, which is not related to these figures in that way. This whole thing is very much complicated by interpretation.

Senator BYRD. The same suspicion that you cast on the unemployment figures would likewise apply to the number that you claim have been reemployed.

Mr. RICHBERG. Perhaps you can look at it in that way, but I would say that you would have to look at it in the other way. As a matter of fact, this is a minimum. If you find so many people employed, that is a minimum. As a matter of fact, if other people have been employed in the meantime, they should be added to it. I think you might regard this from that standpoint as a minimum, because if you actually find those people employed, that is a fact.

Senator BYRD. What you have done in this report—if it is erroneous I do not think you should publish as a Government document. You have taken the total number of unemployed in one column, and then you have claimed credit by reason of the N. R. A. for those that have been reemployed. If these figures are fundamentally inaccurate, I think you should not use this as a public document.

Mr. RICHBERG. No; I explained to you, Senator, that one objection I have to this document is that these figures are credited to the National Emergency Council, and I have declined as the Executive Director of the National Emergency Council to have them given out as coming from them.

Senator BYRD. Who controls the National Industrial Recovery Act Board?

Mr. RICHBERG. That is the National Industrial Recovery Board.

Senator BYRD. You do not have charge of that?

Mr. RICHBERG. I do not run the Board.

Senator BYRD. It is published by the N. R. A. though? I will assume by reason of that, that it is paid for by the National Recovery Administration.

Mr. RICHBERG. I am not criticizing the effort of the National Recovery Administration to make the best statement, the fairest statement, of difficult figures, which are full of estimates and compilations which can be subject either to dispute or must be interpreted. The difficulty with all of our industrial statistics is that they are full of those necessities of interpretation. They mean almost nothing until you begin to interpret what is back of them. That is the reason I explained to you the other day that I was not criticizing the Labor Department, because Miss Perkins has explained over and over again that the difficulty with figures put out is that they require interpretation. They can be very easily misinterpreted, and all of these figures on employment and unemployment are liable to mislead unless they are interpreted with the bases on which they are built up.

Senator KING. Will you pardon me just a minute? Did not Mr. Leon Henderson—is he not largely responsible for the document to which you have been referring, and to which Senator Byrd is now referring?

Mr. RICHBERG. Yes.

Senator KING. Are you challenging the accuracy of his figures or his interpretation, to use your expression?

Mr. RICHBERG. No; I am challenging the use of these particular figures, which I felt were so likely to be misinterpreted, but I did not want to have it given out by the National Emergency Council. I have no objection to the N. R. A. using whatever figures they see fit, and Mr. Henderson has very thoroughly and with an extraordinary care tried to explain all the features of the situation together here without interpretation a mass of figures and statements which are very well worthy of consideration and interpretation.

The difficulty we are in is that if we interpret those figures to help make that clear, we may then be accused of writing a brief on the subject, and Mr. Henderson put this out with an explanatory note saying that it was made without statement of implication or conclusion. He was furnishing the information. A great deal of it has been taken as being the statement of conclusions, and that is what I was trying to cover.

Senator CONNALLY. Of course, you can get absolute accurate figures as to the number employed by getting questionnaires from the industry. Is it true that the figures as to unemployment are largely estimates? You have no census of it, have you?

Mr. RICHBERG. There is no adequate census of unemployment.

Senator CONNALLY. So it is largely a matter of estimate and guess work after all, isn't it?

Mr. RICHBERG. May I point out the difficulty of a census itself? I believe it is very desirable, but——

Senator CONNALLY. I am not defending it or opposing it, but just pointing out where you got the figures.

Mr. RICHBERG. There is the difficulty of determining what is an unemployed person. I happen to have an example in a small town in which I lived, which is typical of many situations throughout the country—of a family with a father employed and two boys employed and two of the girls employed in flush times. When employment was reduced, one of the girls lost her position, a small position in a store, and one of the boys lost his. As a matter of fact, the father got a better position. As far as the family was concerned, they had two unemployed. As the depression continued, it got down to a place where they only had one person employed, but as a matter of fact, if that one person had a decent job at a decent wage to take care of the family, that family would be substantially as well off except for a desire of the members to be employed—they were practically all minors—but if you took a census there, you would find three or four unemployed persons in that particular situation. That is true, I think, of various towns in the South in the textile mills. It is a question of how many people in the family may be employed. It is true all over the country.

Senator BAILEY. There are 28,000,000 families in America; is not that true?

Mr. RICHBERG. That is right.

Senator BAILEY. There are approximately 39,000,000 people employed?

Mr. RICHBERG. Over 40,000,000, I think now.

Senator BAILEY. Put it at 40,000,000. Twenty-eight million families and 40,000,000 people employed. The employment in America in terms of family is one and a third persons per family at the present time; is that right?

Mr. RICHBERG. Yes.

Senator BAILEY. Is that so bad?

Mr. RICHBERG. It all depends on the wage you are getting. Of course, if that employment, which does include a great many people who may be earning $10 a week or less, if that is so, it won't support a family very well. It all depends on the wage that they are getting, but I think, Senator, you have pointed to one fundamental problem that we are dealing with, and that is that as much of this recovery depends upon adequate wages in payment for labor as it does on exact volume of employment. If the labor income is going out in some form so that the families are getting it, it is not so much a question of the volume of employment as it is of the labor income that is being distributed in some manner throughout the families of the Nation.

Senator BAILEY. Let us take it the other way. The high figure was 49,000,000 employed in 1929; is that right?

Mr. RICHBERG. That may have been so.

Senator BAILEY. It fell off a little.

Mr. RICHBERG. There had been a good deal of technological unemployment before that.

Senator BAILEY. That was 49,000,000, and some 800,000, 49,800,000, against 27,000,000 families, or one and a half.

Mr. RICHBERG. Senator, may I call your attention to one reason right in that connection why I do not think it is sound in a period of depression, to add 400,000-and-odd people to the list alleged unemployed just because a certain number of people grow to a certain age at that time? It all depends on whether you can give young people an opportunity for further education, or whether at a certain age they should be regarded as immediately employable and put into the industrial machine. This type of figuring assumes the necessity of employing young people at a certain age.

Senator BAILEY. In trying to recover 10,000,000 of the unemployed and put them back to work, aren't we trying to get back to the 1928 standard, when we are not hoping to get back to that standard in any other respect whatsoever?

Mr. RICHBERG. You have put your finger on one very important factor in it, and that is that a great deal of our employment at that time was accounted for by an extraordinary expansion and credit inflation.

Senator BAILEY. No one contemplates getting back to 1929 and 1928. The Government is trying to get back to pre-war standard, as I understand it.

Senator BARKLEY. I suppose it is not to be disputed by anybody that under the codes, the hours of labor have been shortened?

Mr. RICHBERG. I do not suppose it could possibly de disputed.

Senator BARKLEY. So that theoretically, assuming the same demand on the part of the public for goods and the same ability to purchase the mere shortening of the hours and the spreading of the labor among those required to work, by the shortening of the hours, would automatically increase employment, would it not?

Mr. RICHBERG. It would.

Senator BARKLEY. If anybody can prove that that automatic increase did not occur and that nobody was employed by reason of the codes and the shortening of hours, would it not be difficult to prove that if that had not happened, unemployment would have been considerably greater than it was at any time since the beginning of the N. R. A. administration?

Mr. RICHBERG. I do not think there is any question about that, Senator. One of the reasons for setting up these particular figures is that there is shown, if you go back of these figures into the individual industries, there is shown the increased number of men employed of a same volume of work, and the increase of pay roll resulting directly not from the operation of any natural forces, if you want to use that phrase, but directly from reducing the number of hours and requiring increases in wages at the same time.

A very notable example of that is found, because it is a large amount and the figures are absolutely accurate in the iron and steel industry, that being a tightly integrated industry, it was possible to get the exact figures throughout the period, and the records there shows directly an increase of between 75,000 and 90,000 persons unemployment, and the increase of pay roll of $6,500,000 a month resulting from nothing whatsoever except the increased standards as to wages and the reduced standards of hours.

Senator GORE. At that point, let me ask, does it not follow then if you put an increased number of men on the same volume of work, that while wages increase, in the aggregate, costs of output increase also?

Mr. RICHBERG. Very fortunately, Senator, that does not have an exactly corresponding effect.

Senator GORE. I would not mean mathematically exact as to ratio or proportion, but that would be the effect, would it not?

Mr. RICHBERG. It has some effect of that character.

Senator GORE. By and large.

Mr. RICHBERG. Which is fortunately then negatived by increased volume.

Senator GORE. Of course the increased cost reflects itself in increased prices, and the increased prices reflect itself in reduced consumption. What I am getting at is this: Everybody, I suppose, really believes or professes to believe in the philosophy of high wages, that it is a good thing for everybody concerned, but I figure that anybody who admits that wages can be too low, must admit that wages can be too high.

Mr. RICHBERG. Senator, you will have to let me avoid disagreeing with you on that subject, because it is perfectly obvious that what you have stated, that if wages can be too low, you can also, compared with your market, raise wages so high that you destroy your market.

Senator GORE. That is the point I am getting at, and I was reading yesterday—this is the point I was driving at—with reference to building. Residence building now, taking the high wages that prevail among the building trades and the high costs of building materials, when a house is finished today, it is not worth what it costs. That is, you cannot sell it for what it costs. It is cheaper to rent or buy than it is to build. It strikes me that at the same time in that sort of case a policy that raises wages locks the wheels that you are trying to get going.

Mr. RICHBERG. You will also agree, Senator, that the reduction of wages throughout the period of depression, continually increased the depression and left us worse off, so it is really wholly a question of a fair economic balance.

Senator GORE. I do not think that follows. I will take a concrete example. I know of one concrete case that occurred in 1932 when cotton was selling for $25 a bale. A farmer down in one of the counties in Oklahoma, had a plumber come out and do a day's work, and the plumber charged $15 for a day's work, and it took three-fifths of a bale of cotton to pay for that work of the plumber. I think the plumber might have gotten more work if he had charged $8 or $10 a day. Here is another point: That did not create any extra purchasing power; that simply redistributed purchasing power. It took $15 away from the farmer and a farmer who had created the bale of cotton, who had created the purchasing power in the first instance, and transferred it to the plumber. I think that is a fallacy that is cheating a good many of us in this business. Take the International Harvester Co. and say they have a given output of farm machinery. By paying an extra wage, they would add a million dollars to the cost of the machinery. The laborers have an extra million dollars of purchasing power. That is true, but the farmers

who buy that machinery have parted with that extra million dollars, and if you had allowed it to remain in their hands, they could have bought some things as well as the other fellows. I think that too high wages obstruct recovery, and the way out of the depressions in the past has been for prices to fall and fall and fall and strike rock bottom and stay there long enough for people to know that they are not going any lower down, and then they will buy. When they are convinced that the depression is finished, when that time comes and they see it is not going any further, then they say, "Maybe I can buy something, with a chance of at least getting out what I put in."

Mr. RICHBERG. Senator, you have not figured out exactly how we are going to live through that period of being on rockbottom.

Senator GORE. By not robbing that farmer of what he created and giving it to somebody that did not deserve it. All of this processing tax is taking money away from one person for nothing and giving it to someone else for nothing, and I do not think that is any sure plan out of this difficulty.

Senator BARKLEY. With all of the surplus cotton there was in this country at that time, and the fact that a farmer was willing to work for what he was getting, and a plumber was getting——

Senator GORE (interrupting). $15 a day.

Senator BARKLEY. It afforded a market for cotton which he otherwise would not have had. The farmer had to give it away or sell it for something.

Mr. RICHBERG. May I point out the effect of minimum wages has not been the destructive one that Senator Gore is discussing, because what the minimum wage level increase did was as a matter of fact to bring about just what Senator Gore has been advocating, and that is a balance and leveling out of purchasing power so as to give a better purchasing power to groups that were not getting enough purchasing power. The process was not one of raising the wage scales in the codes at all; it was of raising the levels of the lowest paid groups which thereby brought them into a better purchasing power and a greater ability to purchase the goods made by their fellow workers. That was just simply in the line of economic balance.

Senator GORE. I favor economic balance, but I have another concrete instance in mind. I know of a man who was employing two girls and paying them $6 a week, and if I may use the expression, they were tickled to death to get it. They needed it, and all they did was to fill out blanks in applications to obtain loans from the farm-land banks. He had to fire those two girls who wanted jobs, and he hired one girl in their place and paid $14 a week, and she did not need the job. Of course, that is an isolated case, but you have to keep the concrete facts in mind.

Senator BARKLEY. Has there been any perceptible increase in the proportionate use of machinery to supplant hand labor during the last 2 or 3 years?

Mr. RICHBERG. That is a pretty broad question, Senator. I do not think there has been a definite slowing up of the process that was going on, except so far as it has been unprofitable or difficult from an investment standpoint to make new investments in changing machinery.

Senator COSTIGAN. Have the increased wages tended to increase mechanization?

Mr. RICHBERG. That is one of the points I wanted to make. That the effect of the increased wages, where it is sufficiently strong to bring an inducement to save labor and pay the costs of machines, always must be having that effect. I can give you a very good example, however, of just exactly how that can be met, under the kind of flexible machinery we have in the code situation.

Take it in the bituminous-coal industry, where, in a certain set of mines, mechanization had been done away with, partial mechanization, some years ago, at the express request of the miners. When the code was put in effect, the effort to establish the wage on a $5-a-day basis led to a protest and request from a certain group of mines and their employees jointly to maintain a $4.50 wage. On that basis, the mine operators would not restore their mechanization machinery, but if they had to pay the $5 wage, they would. That is a very practical example of dealing in a very practical way with the situation of the interests of the employer and the employee and the public. The public did not pay any more for coal.

Senator GORE. Was that arrangement made?

Mr. RICHBERG. The last I heard, that arrangement was stil effective. I do not know whether it has been changed since, but the employees, with a little cut, offered a wage to have more of them working. As far as the employer was concerned, it probably cost him a little more than the mechanization would. The public paid no more for the coal. It was an effort to adjust conflicting interests.

Senator GORE. In the industries with which you are familiar, such as the bituminous-coal industry, can you give us specific figures as to increased employment and increased aggregate wages?

Mr. RICHBERG. That is just what I was starting to read.

Senator BARKLEY. Mr. Chairman, I suggest that Mr. Richberg go through this table, as I understood he had contemplated doing when he first mentioned it, and let us inquire about these in detail if we want to.

The CHAIRMAN. I think that is a very good idea, and I think this ought to be put in the record.

Senator BLACK. Before that is done, some questions have been asked, and I want to ask one, if I may.

Senator BARKLEY. One question leads to another.

Senator BYRD. Mr. Richberg will be here tomorrow if necessary.

The CHAIRMAN. All right, Senator Black.

Senator BLACK. Mr. Richberg, a question was asked as to whether or not increased wages would tend to increase mechanization. Do you think it is a wise policy on the part of the United States to try to utilize machinery and actually save labor, or should we adopt laws with the idea of retarding progress?

Mr. RICHBERG. I do not believe personally that there is any value or use in endeavoring as a Government matter to retard the natural progress of an industry in increasing production per labor unit employed, for the simple reason that, as I see it, that is the basis of our entire economic progress. It is the amount of product that you can get out of the labor unit employed.

Senator BLACK. Those who have favored mechanization throughout the years have taken the position, have they not, that it was wise to have it because it would save human labor.

Mr. RICHBERG. That is correct, but I wanted to add to what I said, Senator, that I think there is a great benefit in the type of machinery we have inaugurated under the codes, whereby it is possible in the joint interests of employer and employee, as well as the public, such as in the manner I suggested in the coal industry, temporarily to retard perhaps the operation of that particular economic force that impels the employer to cheapen his labor cost and to increase his output per labor unit for the benefit of the community as a whole.

I think as a part of our recovery program, in order to get ourselves back into a better situation, it is entirely proper to make some of those efforts. I think as a long-range policy, it would be contrary to sound economic advance.

Senator BLACK. Unless we are going to turn directly around in our civilization, we should encourage mechanization, should we not, and attempt to adjust our economic system to take advantage of its progress and its increased production ability?

Mr. RICHBERG. I do not think there is any question about that.

Senator BLACK. A question was asked you about the International Harvester Co. and the wages paid their employees. There is more that enters into the cost of production than the wages of employees, is there not?

Mr. RICHBERG. Sometimes the wages of employees may be as low as 10 percent, or less, of the cost; and sometimes they are as high as 70 percent of the cost. It all depends on the particular industry.

Senator BLACK. As a matter of fact, the labor cost is a rather small item in the highly mechanized production of the International Harvester Co.?

Mr. RICHBERG. I believe that is a fact. I am not familiar with the details, but considering the type of production, I would assume so.

Senator BLACK. And of course if we are going to attempt to prevent anything that would give any excuse for raising the prices, it will also be necessary to call attention to the fact that high profits, high salaries, and high bonuses might affect prices, might it not?

Mr. RICHBERG. They all enter into it.

Senator BLACK. Are you familiar with the startling and phenomenal surpluses that have been created from time to time from profits by the International Harvester Co.?

Mr. RICHBERG. I have not been familiar in recent years with that company. It has been at times a very prosperous company.

Senator BLACK. As a matter of fact, then, when we begin to consider the question of the aggregate purchasing power of labor, and if we reach the fatalistic conclusion that the only thing to do to keep down prices is to lower wages, we completely ignore the fact, do we not, that a part of the unbalanced economic system, and according to some, the major part, is due to excessive profits and excessive expenditures and waste and financial manipulations, do we not?

Mr. RICHBERG. We would certainly be ignoring that factor.

Senator BLACK. Are you familiar with the figures that were recently issued by the Labor Department, that as a matter of fact the cost of labor in manufacturing is only on the average about 16 percent?

Mr. RICHBERG. I am not familiar with those figures and I cannot question their accuracy.

Senator BLACK. With reference to the shortening of hours, I have before me the hours and wages provisions as published by Mr. Leon C.

Marshall. While I have seen numerous statements by General Johnson that we have adopted a 40-hour week, I find from an itemized statement of hours in this book, that there are only five codes that have as low a weekly hour rate as 40, and they are practically all in the clothing industry.

Mr. RICHBERG. That is lower, isn't it?

Senator BLACK. I have the book before me, and I have gone over it one by one.

Mr. RICHBERG. I think the word must be lower because the proportion of the 40-hour week is enormous in the codes.

Senator BLACK. I have it here and I find item 12 is the maximum hours, and I have looked through it. I looked through every one of them. On the first page it states, "maximum hours, 48, 10", that is 48 hours per week and 10 hours per day. Then "46, U." That is 46 hours, unlimited. Then 48, 10; 48, 10. The next one is unlimited. I do not find on the first page a single code in which the maximum hours are as low as 40, and in going through the entire list I have checked them carefully and find only five.

Senator CONNALLY. Only five as low as 40?

Senator BLACK. Only five as low as 40 for the maximum hours.

Mr. RICHBERG. Let me call your attention that in the chart book that was given you on page 37 you will find a set-up of the maximum hours weekly by the codes, and I show this simply physically to the committee. This [indicating] is the body of the 40-hour week, which is the highest of the code provisions.

Senator BLACK. Look on page 38 and interpret it.

Mr. RICHBERG. That is the maximum hours by the employees.

Senator BLACK. What does that say?

Mr. RICHBERG. That shows a percentage of 60 percent, more than 60 percent covered by 40 hours or less, then a rising percentage up to about ninety-odd that is evidently a maximum of 48 hours.

Senator BLACK. This book of Mr. Marshall is published. Is he connected with the N. R. A.?

Mr. RICHBERG. Mr. Marshall is now executive secretary of the N. R. A. He worked on that book as a member of the Brookings Institute.

Senator BLACK. Are these figures accurate?

Mr. RICHBERG. As far as I know, Mr. Marshall's figures are practically always very accurate.

Senator BLACK. Has he taken the codes one by one——

Mr. RICHBERG (interposing). I want to say that I am informed by Mr. Smith that this very chart to which I have referred to is prepared by Mr. Marshall and it is his own interpretation of his own figures.

Senator BLACK. He goes into detail to show that the maximum hours under item 12—you can look completely through item 12 in about 3 minutes, and I can only find 5 codes where the maximum hours are as low as 40.

Mr. RICHBERG. That is in the excepted-period group and not in the general provision.

Senator BLACK. That is correct, but have you any figures that show how many are covered by the excepted period?

Mr. RICHBERG. In special codes, we have actually the figures. I cannot give you the detail of all the codes, but in the individual codes, over and over again, we have compiled a percentage which is some-

times very low, and in some codes it is too high. It varies from say 2 percent to as high as possibly 20 percent, all depending upon the particular codes.

Senator BLACK. There are exceptions and exemptions and limitations on practically every code that is in effect. As a matter of fact, all but five, are there not?

Mr. RICHBERG. I think that is a perfect example of the fact that you meet in industry, that you cannot devise any inflexible rule that does not do a multiplicity of individual hardships.

Senator BLACK. Let us get down for a minute to this. Mr. Hillman is there representing the clothing industry.

Mr. RICHBERG. He is a member of the board by appointment of the President.

Senator BLACK. And that Amalgamated Association has been very strong in labor, has it not, so that they have good contacts with their employers?

Mr. RICHBERG. Yes.

Senator BLACK. It is true, is it not, that in those contacts the codes provide a limitation of 40 hours a week?

Mr. RICHBERG. I will accept your statement; I am not familiar with their contacts. I think that is generally true. I am informed that in the garment trades it is more nearly 36 hours.

Senator BLACK. What I was interested in was to say that in the main where there are no exemptions and no exceptions which permit the working up to 48 hours and 10 hours per day, and in some instances as much—well, some of them unlimited. In asphalt, for instance, it is unlimited, while cement is limited to 48. But in those that are limited to 40, it seems it is the industry where organized labor has been the strongest and has made the most successful contracts. That is true, is it not?

Mr. RICHBERG. I think there is no question but that you will find reduced hours in the organized industries more frequently than in the unorganized industries.

Senator BLACK. The codes did not reduce the hours at all in those where the Amalgamated Clothing Workers were employed, did it?

Mr. RICHBERG. I do not know, but that may well be the fact. I think the statement just made to me by Mr. Smith is correct, that as to minority plants that had no organization, had no relations with organized labor, it undoubtedly did reduce the hours. In fact, I think that is one of the complaints that has been made by them—by that particular minority group.

Senator GERRY. Have you had much complaint, Mr. Richberg, in regard to chiseling in the textile industry, because I am getting that complaint very frequently?

Mr. RICHBERG. There is a great variety of possibilities in the way of complaints from the textile industry, because of the particular conditions existing in that industry, and the various number of individual plants, and so forth, and their different location. We have just gone through a very exhaustive set of reports on the conditions in the textile industry, which are now under consideration by the Federal Trade Commission, the Bureau of Labor Statistics reports, and they are in the repo rt.

Mr. Chairman, might I make this suggestion? In this tabulation which has been given out, there is one figure that is inaccurate; and

I would like to call attention to it at once, because it may lead to a misunderstanding. In the group of the furniture industry which is on the third page, the figure of employment pay rolls October 1933 is given as $220,300. As a matter of fact, that should be $2,223,000.

Senator CLARK. Does that mean the whole furniture industry, Mr. Richberg?

Mr. RICHBERG. Let me explain, because it may not be clear. At the top of the page it says, "employment and pay rolls." These are weekly pay rolls, unless they are especially shown in one or two instances to be monthly. They are weekly pay rolls.

Senator GERRY. These reports that you are completing now in regard to the textile industry—are those going to be published or given to the committee?

Mr. RICHBERG. Most of them, I think, have been published. The Federal Trade Commission has given out its report when it made it.

Mr. HENDERSON. The one on textiles, relating to complaints, has been published.

The CHAIRMAN. Mr. Richberg, this tabulation will go into the record; but I wish you would start at the top now and explain it, because I notice certain instances where the employment increase is quite small, and the employment increase in others is quite large.

Mr. RICHBERG. I wanted to check them down, because I could show some very interesting facts if you follow me down.

The CHAIRMAN. Put it into the record, and then do that.

(The tabulation referred to is as follows:)

Employment and pay rolls in selected industries and groups of industries, March 1933 to January 1935

Industry or industry group	March 1933	High since March 1933		December 1934	January 1935
		Amount	Month		
(1)	(2)	(3)	(4)	(5)	(6)
Automobile manufacturing, automotive parts, and equipment manufacturing industries:					
Employment	199,100	462,200	April 1934	357,500	433,500
Pay rolls	$3,290,000	$11,930,000	do	$8,490,000	$10,170,000
Automobile manufacturing industry:					
Employment	(1)	368,600	do	[2] 215,700	
Pay rolls	(1)	$9,952,000	do	[2] $4,874,000	
Bituminous coal industry:					
Employment	310,103	366,068	November 1934	365,609	
Pay rolls	$3,393,531	$6,510,716	March 1934	$6,300,693	
Bolt, nut, and rivet industry:					
Employment	6,840	10,140	May 1934	8,700	9,410
Pay rolls	$85,500	$220,700	do	$174,400	$202,000
Boot and shoe manufacturing industry:					
Employment	186,700	213,000	August 1934	190,200	199,700
Pay rolls	$2,382,000	$3,764,000	March 1934	$2,848,000	$3,242,000
Brass, bronze, and copper products industries:					
Employment	36,100	61,300	May 1934	55,900	56,600
Pay rolls	$515,000	$1,286,000	do	$1,149,000	$1,205,000
Brick, tile, and terra-cotta industries:					
Employment	22,500	42,200	August 1934	33,400	29,600
Pay rolls	$211,000	$547,000	May 1934	$462,000	$392,000
Can manufacturers industry:					
Employment	19,620	28,920	September 1934	24,480	23,940
Pay rolls	$344,200	$578,400	do	$478,600	$474,900
Candy manufacturing industry:					
Employment	44,260	62,584	October 1934	59,119	50,928
Pay rolls	$478,000	$899,000	do	$886,000	$721,000

[1] Not average.

[2] November.

Employment and pay rolls in selected industries and groups of industries, March 1933 to January 1935—Continued

Industry or industry group	March 1933	High since March 1933		December 1934	January 1935
		Amount	Month		
(1)	(2)	(3)	(4)	(5)	(6)
Cane sugar refining industry:					
Employment	10,658	13,759	November 1934	12,892	13,157
Pay rolls	$236,200	$268,800	June 1934	$252,300	$247,500
Canning and preserving industries:					
Employment	44,700	248,700	September 1933	78,000	69,700
Pay rolls	$459,000	$2,407,000	do	$902,000	$801,000
Carpet and rug manufacturing industry:					
Employment	16,000	27,900	October 1933	22,500	24,400
Pay rolls	$210,100	$534,800	do	$418,600	$455,500
Cast-iron pipe industries:					
Employment	58,725	121,050	August 1934	91,250	112,950
Pay rolls	$68,715	$152,191	May 1934	$139,466	$137,430
Chemical manufacturing industry:					
Employment	48,010	73,950	July 1934	68,720	----
Pay rolls	$999,000	$1,646,000	do	$1,540,000	----
Cleaning and dyeing trade:					
Employment	38,920	50,222	June 1934	42,820	----
Pay rolls	$557,800	$930,100	May 1934	$730,100	----
Corsets and brassiere industry:					
Employment	13,908	14,795	April 1934	13,663	13,892
Pay rolls	$157,100	$231,700	do	$210,200	$212,200
Cotton garment industry, shirts and collars:					
Employment	51,552	65,376	October 1933	52,128	52,070
Pay rolls	$453,215	$820,295	do	$641,585	$626,290
Cotton goods (textile) industry:					
Employment	307,200	446,600	April 1934	414,700	416,000
Pay rolls	$2,787,000	$5,787,000	do	$5,469,000	$5,525,290
Electrical manufacturing industry:					
Excluding radios:					
Employment	109,600	171,600	June 1934	170,100	171,000
Pay rolls	$1,663,000	$3,533,000	January 1935	$3,518,000	$3,533,000
Radio division:					
Employment	20,000	50,600	November 1933	42,200	39,000
Pay rolls	$317,000	$980,000	do	$859,000	$734,000
Fabricated metal products industry:					
Cutlery and edge tools:					
Employment	9,000	13,700	April 1934	12,800	12,700
Pay rolls	$107,000	$242,000	do	$235,000	$226,000
Hardware:					
Employment	25,392	43,844	do	25,906	26,522
Pay rolls	$321,552	$856,254	do	$500,598	$507,906
Lighting equipment:					
Employment	9,221	15,775	December 1934	15,775	14,984
Pay rolls	$159,225	$347,979	do	$347,979	$317,292
Stamped and enameled ware:					
Employment	20,850	31,739	May 1934	29,050	29,581
Pay rolls	$289,159	$641,212	do	$606,697	$595,192
Tools (except edge tools):					
Employment	7,053	11,277	April 1934	10,615	10,901
Pay rolls	$95,146	$227,340	May 1934	$219,341	$227,761
Wirework:					
Employment	15,174	24,264	do	22,698	21,726
Pay rolls	$199,200	$510,865	do	$444,880	$426,205
Farm equipment industry:					
Employment	9,330	19,210	April 1934	18,460	19,710
Pay rolls	$137,000	$382,000	do	$373,000	$398,000
Fertilizer industry:					
Employment	13,700	28,200	do	15,400	17,200
Pay rolls	$133,500	$319,800	do	$182,600	$202,200
Furniture industry:					
Employment	83,400	133,300	October 1933	11,400	108,900
Pay rolls	$897,000	$2,223,000	do	$1,859,000	$1,761,000
Glass industries:					
Employment	83,400	68,540	April 1934	62,460	61,850
Hsiecay rolls	$657,000	$1,325,000	do	$1,180,000	$1,146,000
Pry industry:					
Employment	105,000	133,200	do	127,700	----
Pay rolls	$1,222,000	$2,136,000	March 1934	$2,020,000	----
Hotel industry:					
Employment	217,900	263,000	do	253,100	----
Pay rolls	$2,659,000	$3,317,000	do	$3,233,000	----
Iron and steel forging industries:					
Employment	7,400	14,700	do	13,100	----
Pay rolls	$99,000	$327,000	do	$295,000	----

Employment and pay rolls in selected industries and groups of industries, March 1933 to January 1935—Continued

Industry or industry group	March 1933	High since March 1933		December 1934	January 1935
		Amount	Month		
(1)	(2)	(3)	(4)	(5)	(6)
Iron and steel industries:					
Employment	229,300	400,600	June 1934	339,200	351,400
Pay rolls (average monthly)	$13,690,000	$42,290,000	May 1934	$29,830,000	$34,350,000
Jewelry industries:					
Employment	12,148	19,980	October 1934	18,674	17,193
Pay rolls	$198,300	$432,294	do	$419,074	$335,788
Knitted outerwear industry:					
Employment	19,850	31,820	May 1934	26,770	
Pay rolls	$240,300	$491,000	October 1933	$354,100	
Laundry trade:					
Employment	170,200	187,000	July 1934	175,800	
Pay rolls	$2,289,000	$2,768,000	June 1934	$2,566,000	
Leather industry:					
Employment	37,000	51,800	March 1934	50,500	51,200
Pay rolls	$653,000	$1,129,000	January 1935	$1,103,000	$1,129,000
Locomotive industry:					
Employment	1,800	5,600	August 1934	5,300	4,400
Pay rolls	$25,600	$109,700	do	$102,800	$81,700
Lumber and timber products industry:					
Employment	167,300	286,000	May 1934	251,700	246,200
Pay rolls	$1,611,000	$4,010,000	do	$3,408,000	$3,246,000
Machine tool and forging machinery:					
Employment	9,300	22,470	January 1935	22,190	22,470
Pay rolls	$148,000	$505,000	May 1934	$480,000	$494,000
Manufacturing pharmaceutical and biological industries:					
Employment	13,590	15,250	October 1934	14,670	14,440
Pay rolls	$270,600	$323,900	do	$309,800	$316,200
Men's clothing industry:					
Employment	111,700	134,600	September 1933	116,900	124,100
Pay rolls	$1,511,000	$2,486,000	March 1934	$1,984,000	$2,150,311
Millinery industry:					
Employment	25,130	25,570	April 1933	16,300	18,200
Pay rolls	$345,000	$553,600	March 1934	$289,100	$354,000
Paint, varnish, and lacquer manufacturing industry:					
Employment	19,420	28,890	May 1934	26,760	26,520
Pay rolls	$351,800	$629,600	do	$558,900	$568,700
Paper and pulp industry:					
Employment	94,500	128,300	December 1934	128,300	127,500
Pay rolls	$1,564,000	$2,489,000	do January 1935	$2,489,000	$2,489,000
Paper box and container manufacturing industries:					
Employment	38,863	52,120	October 1933	50,357	47,341
Pay rolls	$545,237	$882,409	December 1934	$882,409	$799,183
Plumbing fixtures industry:					
Employment	13,780	20,080	September 1933	15,630	17,950
Pay rolls	$209,600	$342,100	do	$317,900	$321,500
Portland cement industry:					
Employment	12,510	22,890	June 1934	16,120	14,410
Pay rolls	$195,000	$488,000	do	$296,000	$260,000
Pottery industries:					
Employment	19,859	28,013	May 1934	26,404	26,143
Pay rolls	$261,630	$460,836	do	$459,000	$430,542
Printing and publishing industries:					
Employment	205,800	234,900	December 1934	234,900	
Pay rolls	$5,380,000	$6,860,000	do	$6,860,000	
Railway car building industry:					
Employment	12,760	29,770	June 1934	18,770	18,890
Pay rolls	$255,000	$691,000	do	$410,000	$412,000
Rayon and synthetic yarn industry:					
Employment	37,540	52,950	January 1935	51,700	52,950
Pay rolls	$597,400	$1,025,500	do	$1,004,800	$1,025,500
Retail trade (labor data for general merchandise group and failures):					
Employment	585,000	1,054,000	December 1934	1,054,000	771,000
Pay rolls	$8,410,000	$15,400,000	do	$15,400,000	$11,830,000
Rubber manufacturing industry:					
Employment	43,500	66,800	October 1933	55,200	56,800
Pay rolls	$583,000	$1,130,000	do	$1,010,000	$1,075,000
Rubber tire manufacturing industry:					
Employment	41,760	68,280	May 1934	59,370	61,700
Pay rolls	$631,000	$1,733,000	April 1934	$1,537,000	$1,593,000

Employment and pay rolls in selected industries and groups of industries, March 1933 to January 1935—Continued

Industry or industry group	March 1933	High since March 1933		December 1934	January 1935
		Amount	Month		
(1)	(2)	(3)	(4)	(5)	(6)
Shipbuilding and boatbuilding industries:					
Employment	26,800	42,900	June 1934	38,300	37,900
Pay rolls	$540,000	$1,020,000	----do	$936,000	$931,000
Silk textile industries:					
Employment	89,400	126,900	February 1935	113,200	119,800
Pay rolls	$973,000	$1,936,000	----do	$1,807,000	$1,904,000
Soap and glycerine industries:					
Employment	13,200	18,100	January 1935	16,100	18,100
Pay rolls	$252,500	$357,500	October 1934	$342,800	$342,500
Steam and hot-water heating apparatus industries:					
Employment	17,040	27,180	September 1933	22,070	21,750
Pay rolls	$248,000	$485,000	August 1933	$455,000	$449,000
Stove and range industries:					
Employment	21,560	41,540	May 1934	37,430	35,230
Pay rolls	$317,000	$840,000	October 1934	$714,000	$648,000
Textile machinery manufacturing industry:					
Employment	13,830	23,480	September 1933	18,670	19,160
Pay rolls	$207,400	$489,700	October 1933	$382,700	$391,500
Tobacco manufacturing industries:					
Employment	73,767	91,344	November 1933	85,670	78,196
Pay rolls	$743,150	$1,139,200	October 1933	$1,110,275	$923,375
Underwear and allied products industry:					
Employment	30,710	41,000	July 1933	32,290	----------
Pay rolls	$309,600	$537,000	April 1934	$425,600	----------
Wheat flour milling industry:					
Employment	21,300	27,570	October 1934	26,460	26,111
Pay rolls	$389,000	$555,800	September 1934	$515,300	$516,600
Women's clothing manufacturing industries:					
Employment	141,600	168,800	April 1934	142,500	149,800
Pay rolls	$1,972,000	$3,559,000	March 1934	$2,550,000	$2,885,000
Wool textile industry:					
Employment	91,000	162,500	August 1933	140,100	150,200
Pay rolls	$1,099,000	$2,527,000	----do	$2,358,000	$2,589,000

Senator KING. Before you start on that, I would like to ask one or two questions. Have you taken into account in the rise in employment as one of the factors—and an important factor—the change in public sentiment, the psychology of the people resulting—and this is not partisan, and I do not want it to be considered as partisan—from the attitude of Mr. Roosevelt as manifested in his inaugural address and in the general reflection of his views throughout the country as being favorable to increase in wages, and to a resuscitation of industry. Did you take into account the fact that throughout the whole country there was a general awakening, a feeling of encouragement that we had reached the bottom and everybody was arranging to expand business and go to work.

Mr. RICHBERG. It would be perfectly inaccurate, Senator, to set up any figures and not write into your interpretation of them the imponderable factors of public confidence and hope and other forces such as these factors of——

Senator KING (interposing). The reopening of banks and other things of that category.

Mr. RICHBERG. Precisely. All of those things enter into the picture. I do not want to claim, and it has been repeatedly stated in the N. R. A. publications that it was impossible to allocate the exact

value of the N. R. A. in the total beneficent result; but what we can see when we take the individual figures of the different industries that we have today, we see we have hundreds of thousands of people employed who would not be employed if the old hours and wages had been maintained. That is clear.

In the second place, we also can show in industry after industry that, as a matter of fact, if we had not preserved masses of small enterprises in that industry, the tendency would have been to further concentration of employment and production in a few highly organized concentrated organizations, which are commonly described as of "monopolistic" character, which would have resulted in less employment and less total pay rolls. That also can only be demonstrated by taking up industry after industry.

I have a series of individual reports here on the individual industries showing exactly what happened, and the relationship of fair-trade-practice provisions and hour provisions to the advance in that particular industry, showing what happened to the small enterprises—showing exactly the number of small enterprises that have come into being under the codes, and the decline in the number of small enterprises—and those are facts. It is merely a question of taking them up, industry after industry, and finding that out.

Senator GORE. You made reference there to the decline in the number of small industries. Were you merely making that as a reference or do you have the figures?

Mr. RICHBERG. Of course, I cannot make a composite of that for all industry. You cannot put a figure, no; but I can show you by one industry after another.

Senator GORE. I thought you had the statistics.

Mr. RICHBERG. No; I can show you, for example, in such industries as lumber and coal and retail trade and other groups, where either enormous additions had been made to the number of small enterprises operating or the rate of decline or insolvency of small enterprises has been stopped.

Senator GEORGE. Can you show that by sections?

Mr. RICHBERG. Sections of the country?

Senator GEORGE. Yes.

Mr. RICHBERG. To some extent it can be shown by sections. Last night I happened to be speaking to a man who knew the conditions generally in the southern lumber operations, in which he pointed out to me the number of small enterprises that had been revived in their section of the country under the lumber code.

Senator GEORGE. Can you, for instance, say how many small units in the lumber industry have gone clear out of business in the Southeastern States?

Mr. RICHBERG. In recent years?

Senator GEORGE. Since the codes.

Mr. RICHBERG. Since the code—I do not know how far we can get the details of that.

Mr. HENDERSON. The code authority does not have any reporting in and out.

Mr. RICHBERG. As a matter of fact, that sort of thing comes to us usually when the code authority itself meets the problem of an increased number of small enterprises. That has been true in sections in the lumber industry. I know I saw the figure made that they had

opened up 3,000 new sawmills, which was issued by the people who were in touch with the conditions in the industry.

In the coal industry, for example, after the coal code went into effect not only hundreds but several hundreds of small mines in particular States even opened up, more or less demoralizing by their operations, for the time being, the beneficent effect of the code.

In fact, as I say, in industry after industry, the protections which have been thrown around the small enterprise have resulted, when you take that particular industry, in an increase in the number of enterprises, or in a decline, in extinction of small enterprises, that is, in the preservation of them, but that can only be shown when you go through industry after industry. These figures however I think can be given, which I have here.

Senator GEORGE. Mr. Richberg, if you should find that there had been a notable decline of the small units in a given industry, and that there had been a shifting of that industry from one section to the other or different sections of the country, would you reach any conclusion from those facts?

Mr. RICHBERG. You might reach a great many conclusions.

Senator GEORGE. I mean since the code.

Mr. RICHBERG. From the standpoint of the benefit, the question would be from the total picture, what was your employment picture? Perhaps it might be improved. The shifting of industry from one section of the country has not always meant unemployment. It may have meant unemployment in one section. The moving of the textiles into the South has made areas of unemployment in the North, and areas of employment in the South. From the standpoint of the North, that movement had nothing to do with the codes. It came on long before them.

The lumber situation has been steadily one of competition between highly mechanized operations, large-scale operations under most favorable conditions, and the effort to survive, of other lumber groups in parts of the country where such operations could not be carried on, and where the only resort was to very cheap labor in order to maintain a position at all in the competitive market. That has meant, for example, in certain districts of the South, intolerably low wages for labor, and yet the operators cannot be criticized for having met a competitive condition. They could not sell in the market and pay any higher wages. The improvement in market conditions has made it possible for many of those operators to pay better wages. On the other hand, there may be others that have been extinguished as a result of them.

Senator GEORGE. The question I am asking you, and I wish you would give it some thought if you have not, if you find exactly the same small unit type of industry going out in one section but coming back in another, isn't that a matter that ought to give pause to take notice as to whether or not you are not disturbing conditions and doing more harm than good in that particular industry at least?

Mr. RICHBERG. I do not think there is any question of that, Senator, and as a matter of fact, just because of such disturbing effects, frequently code provisions have been changed and have been completely abrogated. In the case of the lumber industry, as a matter of fact, the N. R. A. has gone through a series of transitions

one after another, which, as I recollect, in the last phase was practically eliminating the price control.

Senator CLARK. Were there any Pittsburgh plusses in that lumber code?

Mr. RICHBERG. I have not got anything to say in defense of the detail of the lumber code, Senator, because as I said yesterday, from the economic and legal standpoint I have always criticized many provisions in it very severely.

Senator CLARK. The first time I read the lumber code I found it was filled with Pittsburgh plusses, which we had been fighting for 40 years to eliminate, and I wonder if in any of the amendments to the lumber code, those Pittsburgh plusses had been taken out.

Mr. RICHBERG. I think all of the price provisions in the Lumber Code have been taken out.

Senator GEORGE. If you should run across a telegram which I sent to General Johnson when the lumber code was first broached, I wish you would do me the kindness to put it in the record, because in that telegram I tried to portray exactly what would happen in that industry and I regret to say that at that time in the rush to make codes, suggestions especially coming from Senators and Congressmen, seemed not to have met with very much favor.

Mr. RICHBERG. Senator, I think that all suggestions at that time met with consideration, but I will be free to say that in the rush and jam it was impossible in all too many instances to give adequate consideration to all of the factors that might enter into the picture, and there has been a constant course of revision and improvement as the result of the slowing down of the process, which some people call the chloroforming of the N. R. A. I think the improvement in the health of the patient should not always be regarded in that way.

Senator GEORGE. I am not trying to chloroform the N. R. A., because I voted for it and I am trying to save it. But there is a question which must inevitably be considered if these codes are to be continued.

Senator BAILEY. The N. R. A. did chloroform some of the local sawmills in North and South Carolina, and I will tell you the facts.

Senator BYRD. Also in Virginia.

Senator BAILEY. North Carolina pine sold at $30 a thousand under the code. Western fir delivered from the Pacific coast at Norfolk sold for $20. That, of course, put the North Carolina pine out of the market. Those figures are gotten up by the North Carolina Pine Association. I tried to reconcile them to the situation, but it was very difficult. In addition to that, the C. W. A. came along and paid the sawmill workers 30 to 40 cents an hour where the sawmill people could not pay it, and of course the mills went to sleep. That is your situation about that.

Mr. RICHBERG. As I have said repeatedly, Senator, I think in the first place the lumber situation represented one of our most difficult problems involving not only masses of very low-paid labor, but also the question of the waste of natural resources, involving conflict also between sectional interests of a very striking degree, and frankly I think the effort to tackle that large problem with the speed with which it was tackled was almost foredoomed to failure. It was an experiment which could only be successful if it was a miracle.

Senator CLARK. Let me ask you if you know anything about this. I was told that at the first meeting to form a lumber code, that

Deputy Administrator Cates, I believe his name was, by way of outlining the procedure suggested to them to sit down first and write out a list of all of the things that they would like to have been doing for the last 25 or 30 years and were not doing because they were afraid of the antitrust laws. He said, "We may not be able to give you all of that, but we will be able to give you a great many of those things." Do you know whether that occurred or not?

Mr. RICHBERG. If it did happen, I think it is an incident without precedent in the N. R. A.

Senator GEORGE. Upon that point of the speed with which action was thought to be necessary or with which it was undertaken, did not the Labor Board and the Industrial Advisory Board both ask for a slowing down in the making of these codes in the first instance? Is that not a matter of record in the N. R. A.?

Mr. RICHBERG. I do not know that the Industrial Advisory Board did, Senator. Of course, the Labor Board in many instances asked for further delay in the consideration before the approval of a code which to them was not acceptable. I do not know whether it took that composite position of asking for a slower process. I am at a little disadvantage because I fought for a slower process myself on many occasions.

Senator GEORGE. I am asking for information, because I think it is important, and I have some information that this is true.

Senator KING. Is that last statement you made entirely accurate, in your reply to Senator Clark? Is it not a fact, that many of the codes, perhaps the overwhelming number of codes, were drafted by a small group of individuals who represented the largest interests in the group or in the particular industry for which the code was being drafted? For instance, the textile code; was that code not drawn largely by Mr. Hillman and a few of the Amalgamated representatives of that big industry which sought to concentrate all of the textile industry in 3 or 4 cities, Rochester, and so forth?

Mr. RICHBERG. Senator, I think you are not referring there to the textile code, which is not involved.

Senator KING. I beg your pardon; I mean the clothing code.

Mr. RICHBERG. I do not know the extent of Mr. Hillman's participation in those codes, except that in those industries where Mr. Hillman's organization——

Senator KING (interposing). The Amalgamated.

Mr. RICHBERG. Yes. Where that was very strong, naturally, they were given a great deal of consideration—they had close relations with the employers. The employers and labor representatives in those industries worked together to get the sort of a code which they thought would be for the health of the industry.

Senator KING. I come back to the inquiry again. Will you pardon the repetition? Is it not a fact that nearly all of the codes were drafted by a limited number of individuals who represented the largest interests in the industry?

Mr. RICHBERG. I am sorry, Senator, I cannot say that is a fact.

Senator KING. I shall ask before we get through for the names of those who participated in the drafting of the codes and those who have been managing the codes and have been getting salaries from $15,000 to $50,000 a year.

Mr. RICHBERG. Code by code, Senator, we can give you that entire information.

Senator KING. I would like it.

Mr. RICHBERG. Because, as a matter of fact, a report was made which was the basis of the report to the President, in every instance, setting forth all of those who had participated, the committees, the groups, and the representation of the industry. It was one of our obligations to know that.

Senator GEORGE. Right on that point, Mr. Richberg, you said the other day, and I am sure that it is true, that in an industry where there was a trade organization fairly representative of the industry, that that trade organization itself, at least on the record, sometimes—not always—took the lead in the formation of the code.

Mr. RICHBERG. Quite true.

Senator GEORGE. It is a fact, is it not, that in those trade associations and organizations, you find frequently the large units absolutely dominating the association, do you not?

Mr. RICHBERG. May I say that that is not a statement which can be endorsed wholly for this reason, that the interest of most of the trade associations which are representative is in preserving and retaining within them the mass of the numbers of the small enterprises in the industry. It happens to be that in almost every instance it is very much to the interest of the secretary of the trade association and the trade association itself to retain the support of the mass of small enterprises, because otherwise the association becomes merely a group of a few strong enterprises.

I have myself had the experience of talking to many of these associations in convention at one time or another in the last 2 years, and all I can say to you is that I have found in instance after instance in these large industrial groups several hundred or several thousand men actively participating in the work of their trade association.

Senator GEORGE. Granted that that is true, but coming back to the lumber code, is it not true that the trade association in that instance was very largely dominated by the big units?

Mr. RICHBERG. I cannot tell you exactly that. I would make a statement which would be inaccurate if I answered your question categorically. It may be true and it may not be true. Mr. Smith tells me that in that industry there are about 100 different trade associations, and one of the difficulties we had in the early stages of the drafting, which I remember very well, was the tremendously vigorous opposition to the plans proposed by one group by other groups, because I had myself at that time various groups coming in to me representing different conflicting groups in the industry.

I would not say that it was fair to say that the industry was dominated by a few large groups, although in the operations there are a few large groups in the lumber industry which have a very powerful influence over the industrial conditions.

The CHAIRMAN. I may say that the heads of the lumber associations have come to us and they are ready to appear before the committee at any time, which I think we should have them do at some time before we finish.

Senator BARKLEY. The original act authorized, specifically, trade associations and trade groups to formulate codes and promulgate them with the approval of the President.

Mr. RICHBERG. That is true.

Senator BARKLEY. It is true that in certain sections of the country, certain industries are more highly organized than in other sections of the country, and that naturally gave them an opportunity to seize the leadership in the formation of the codes.

Mr. RICHBERG. That is true.

Senator BARKLEY. The unorganized portion of that industry in the unorganized sections woke up to the fact that they needed an organization, too late, some of them, because the codes had already been formulated, and they had been so formulated that if they had been carried out as originally submitted, would have put many small industries out of business. Fortunately, the N. R. A. was in a position to be persuaded of that fact, and in many cases which have come within my knowledge, they modified the codes as provided by the trade groups originally, so as to permit these small industries to continue.

I have a number of cases which were brought to my attention and which I brought to the attention of the authorities, which would have resulted in the elimination of many small units. For instance, in the cotton-garment industry and certain groups of the electrical industry and others that need not be mentioned, which if carried out as originally designed by those who framed the codes, would have resulted in their elimination; but I think it should be said to the credit of the N. R. A. that when they were convinced of that, they compelled certain modifications which would permit these small units to continue in business and still are continuing in business.

Mr. RICHBERG. I remember that that particular question arose in connection with the electrical manufacturing code, which was a code, where there were very large groups in the industry, and at the same time the code was presented by a very representative association. Eventually, other groups that had not been represented, brought in requests for modifications or further representation.

That occurred, of course, from time to time, as you have said, from the very fact that the industries were invited to bring in their codes and where there was an organization, that organization would move in at once. If it was not representative, in many instances they had to go back and gather into the fold and bring along with them a larger representation of their industry before they would get consideration.

Senator BARKLEY. Of course they could not force them to come into the organization. That was brought about largely by the sudden realization of the unorganized portion that it was to their interest to come in so that they might have participation and representation in the making of the code.

Mr. RICHBERG. Precisely.

Senator BARKLEY. I suppose it is too much to expect of human nature that it would forego any advantage that it might obtain by reason of this organized situation. The only criticism that I had at the time, it seemed entirely too difficult to persuade those who were dealing with the codes, that it was the duty of the Government to see to it that these large organized units were not permitted to strangle the smaller ones by reason of their organized advantage.

Senator BYRD. I just want to ask Mr. Richberg if he will be kind enough to furnish the committee with the estimated statement of the cost of operating these 700 different codes and assessed back to the members of the code and actually an increase in their taxation.

Mr. RICHBERG. We will have a statement of that.

Senator BYRD. I am informed it cost $2,000,000 year to operate the lumber code alone.

Mr. RICHBERG. I have the statement here.

Senator KING. It is over $60,000,000, isn't it?

Mr. RICHBERG. About $41,000,000.

Senator BYRD. Have you that itemized by each code?

Mr. RICHBERG. It is a fraction of 1 percent of the total sales.

Senator CLARK. Have you any limitation in the codes on what the code authority may assess for operation?

Mr. RICHBERG. The matter is handled in this way: Under the regulations of the N. R. A., the budgets are required to be submitted for budgetary control and approval through the N. R. A.

Senator KING. That has not been done.

Mr. RICHBERG. It has been done recently. It was not done in the early stages and a great many abuses developed.

Senator CLARK. Is there any limitation of salaries that these fellows can pay themselves?

Mr. RICHBERG. The budget will not be approved with excessive salaries, by the N. R. A. I have also a tabulation of the list of salaries and they are not as high as commonly reported.

Senator CLARK. Say that some particular concern in an industry had not participated in the formation of the code, but the code was made up and the code authority created, and then this concern brought within the operation of the code under the act. Then that code authority has the right to assess against that concern whatever it pleased?

Mr. RICHBERG. It has no legal right to assess what it pleases against the industry.

Senator KING. They will remove the blue eagle if they don't pay it.

Senator CLARK. That is an assessment for its operation.

Mr. RICHBERG. As a matter of fact, these voluntary associations started out with a voluntary collection of dues just as they had before. To give an example of where the matter is entirely outside of code control and is wholly a voluntary matter, the Iron and Steel Institute pays its own expenses, the membership is entirely voluntary, and nothing is assessed on the industry outside of the membership.

Senator CLARK. Let us say that A is operating a lumber mill engaged in the lumber business and he did not participate in the formation of the code. Is he not notified by the code authority that his assessment is so much for the support of the code authority?

Mr. RICHBERG. They may notify him of that, but I do not know of any legal authority for their collecting it.

Senator CLARK. Do you mean that the lumber code authority would be supported by voluntary contributions?

Mr. RICHBERG. My own personal feeling is that these code authorities should be supported if they are voluntary associations, by voluntary contributions.

Senator CLARK. But I am speaking now as to whether they do not have a right under the present practice to assess individual concerns for the support of the lumber code authority?

Mr. RICHBERG. This has been a developing matter, Senators, and I have been out of the active question for a while. I am trying to get the information.

Let me say the way the matter developed. At the start, we took the position that these were voluntary associations who should meet their expenses in a voluntary way. After that was developed, bit by bit, here you had an industry with all of the participant enterprises favoring it, and it was a very small cost spread over them, and they usually carried their share.

Effort was made in many instances by code authorities to compel, without any authority whatsoever, people to pay assessments and to use various tactics to try to get them to.

As soon as that was brought to our attention, we tried to stop that kind of business and set up instead the present line of rules providing for making a budget of the expenses of the industry, providing for a method of the assessment of that budget, and as far as there is legal authority for them, I simply must repeat what I have said from the beginning, that I thought it was a grave question as to how far those assessments could be carried out unless you had a distinctly governmental operation, such as the regulation of a public utility, where you add the expense of that.

Senator CLARK. What I was trying to get at was whether these code authorities set up by the industries themselves, or by groups within the industries were exercising the right to in effect tax individual concerns.

Mr. RICHBERG. I do not think they have any such authority, and I do not think they can exercise it under the sanction of the Government unless it is a part of a Government operation.

Senator CLARK. I agree with you from the legal standpoint.

Mr. RICHBERG. The question presented in the points that I presented to this committee for the consideration of the committee was to face the problem squarely as to the desirability of maintaining these code administrations without imposing the cost on the Government, and then to decide whether that should be authorized—the maintenance of them—by the N. R. A. and if so, what limitations should be placed upon it.

I have got detailed recommendations along that line which we will be very glad to take up when we reach that particular subject.

Senator CLARK. Just let me ask you another question, and I certainly do not desire to ask you anything with which you are not familiar. That is a question of multiple assessments. I have an instance in mind of a man engaged in a rather small business in St. Louis, but he told me that he came under 6 or 7 different separate codes, and he has been forced to put in most of his time here in Washington for 7 or 8 months on the formation of these codes, the formation of these various codes, and was about to be compelled, so he said, to pay assessments for the support of 6 or 7 different codes which he said would be a very real burden on his business. Are you familiar with situations of that kind?

Mr. RICHBERG. I am familiar with the problem, because the problem of overlapping codes and the problem of overlapping of costs has been one that has been with us from the beginning.

As a matter of fact, it should be met and can be met in most instances by a simplified form of supporting the various codes with which a man may be affected, simplifying the number of codes that might affect a particular business. It is a steady working out of a problem that developed in this very rapid imposition of a vast number

of codes, which in a business of a composite nature, had this overlapping defect. It has been a very complicated problem from the beginning.

Senator CLARK. Take the case of a wholesale grocer. He might be under the wholesalers' code, the tobacconists' code, the confectionery code, the bakery code, and a number of other codes.

Mr. RICHBERG. The effort has been, and I think it can be worked out properly, that a man should have substantially only one obligation for support of a major part of his business.

The CHAIRMAN. Are you making progress along that policy?

Mr. RICHBERG. I do not think there is any question about that.

Senator BARKLEY. To what extent has an effort been made by the code authorities to penalize men who did not pay the assessment? I have heard of instances where it was not a compulsory thing, but the code authority, or somebody, would send out a form letter or notice of some kind that your share of the cost of administration of this code under which you operate is so much, say $15 or $20 per $100. Suppose he does not pay it. Has anybody thought to exercise any penalty or to assess any penalty or to take away from his right to do business? What is done about that?

Mr. RICHBERG. The first time the question came up in a code early in the N. R. A., I made a public statement as a statement of position, that we could not authorize the collection of a civil debt by penalties. We could not penalize a man for not meeting a civil obligation. The effort on the part of the code authorities to obtain various devices to get adequate support of their codes have been many. I would like to find out whether as a matter of fact there has been the taking away of the "blue eagle" because of nonpayment of assessments. Mr. Smith tells me there have been no penalties imposed, and there may have been a few cases in which the Blue Eagle has been removed for nonsupport.

Senator BYRD. The effort has been frequently made by the code authorities through a threat that they will sue those who are delinquent in their statement, in the United States court, because I have seen the letters.

Senator GEORGE. There has been one suit, hasn't there?

Mr. RICHBERG. There has been one suit in which the court upheld the assessment.

Senator BAILEY. Let me ask you a question, Mr. Richberg. These enterprises with which we are dealing may be divided into three classes—the highly efficient, the efficient, and the inefficient. If you make a code whereby the inefficient business would make 6 percent, the efficient business would make 10, and the highly efficient would make 15. If you try to make a system that will cut the highly efficient down to 6, the efficient will go down to 3 and the inefficient will go broke. What is the answer to that problem? How can the Government undertake to deal with a situation of that sort?

Mr. RICHBERG. I think the Government must attempt the final one standard, and that is merely maintaining fair competitive conditions, not including efforts to regulate price. By that I do not mean that you cannot prevent purely destructive price cutting, the type of thing which no one can live under——

Senator BAILEY (interrupting). When you apply any rule of uniformity to three types of institutions—the highly efficient, the efficient, and the inefficient——

Mr. RICHBERG (interrupting). You get three different results.

Senator BAILEY. Yes. And the result would be an abnormal profit for the highly efficient, or bankruptcy for the inefficient. Is not that the problem we have to deal with in drawing this act?

Mr. RICHBERG. I think the answer to the problem is essentially this. If you are trying to maintain a competitive position, if you are trying to maintain a competitive economic system, I think you have got to let the normal results of fair competition——

Senator BAILEY (interrupting). Can we cast the three types into one system so arranged that the highest won't make too much or the lowest won't go broke?

Mr. RICHBERG. I doubt if you can arrange that by any Government fiat.

Senator BARKLEY. Is it your theory or the theory of the N. R. A. generally that ultimately we must work out a rigid yardstick to apply to every section of the country, regardless of local conditions?

Mr. RICHBERG. I do not think you can work out any rigid yardsticks that can be successfully applied.

Senator BARKLEY. I agree with you, although I have been told that there are some who believe that ultimately you can ignore all geographical differences and all social differences and the standard of living and the cost of living, and to fix for everybody in the whole country everywhere a rigid standard by which everybody must operate. I do not see how that is possible.

Mr. RICHBERG. May I say that most of the questions that have been directed to the practice provisions have been directed with the idea of price control. As a matter of fact, despite the number of pricing provisions in the codes, the trade practices have been only concerned to a minor extent with price controls. The great mass of trade practices which I have been trying to show the necessity of and which have an advantage to the small business man and the large man and to the consumer, are the type of trade practices which prevent obtaining business through fraudulent misrepresentation and sharp practices. Those vary in every industry.

Take for example just in the differences between the sort of thing in the manufacture of a tire for an automobile. That particular code, as I recollect, requires certain stamping and branding on the tires so you can tell the kind of a tire you are buying. That does not apply to another industry where, for example, the particular practice which may be in effect in that industry, instead of being misbranding which makes particular trouble, may be some method of dishonest representation of quantity or quality, some other form of trade practice which rooks the consumer as well as the small competitor.

This large field of trade practices cannot be covered in a few words, because you have got in every industry its particular problem of sharp practices and dishonest practices, and the major provisions of these codes are related to those matters, outside of the labor provisions.

The second group is one of pricing provisions, and one of the principal problems there has been simply to require people to stick to the prices published, to make the prices and stick to them. Not to control the prices they should make, but to require such open price filing of the prices which are prevalent in the industry and that will be known to all. That is a matter which is 90 percent for the benefit of the smaller enterprises rather than the large. The smaller enterprises that

cannot obtain information in any other way adequately on which to base their price. It is for the advantage of the consumer to know the prices that are being quoted.

You move into another field of pricing provisions where there may be an effort made to prevent prices being destructively cut below cost levels, and that is distinctly, as I pointed out today, the preeminent weapon of monopoly, and every effort that can be made to prevent that kind of price cutting has been a blow to monopolistic practice. That is what I meant when I said before that the codes themselves have provided real protections against monopolistic advance and monopolistic control such as we have never had in this country before, and to abandon that on the theory that you are helping the small man simply shows an ignorance of what has actually taken place, because those rules are entirely in favor of the small enterprises.

The other question which is involved as to whether, under cover of code operators of the larger enterprises have exercised an undue influence or obtained an advantage in the field, is an entirely different question.

Senator GERRY. Mr. Richberg, in regard to chiseling, that comes under the N. R. A. investigation, doesn't it, and not under the fair practices of the Federal Trade Commission?

Mr. RICHBERG. As to what is a violation of the code provisions?

Senator GERRY. Yes.

Mr. RICHBERG. Yes.

Senator GERRY. And that you have conducted investigations upon, and have statistics of the investigations in, the different industries?

Mr. RICHBERG. Yes; that was the type of investigation that I summarized as showing some 31,000 complaints regarding trade practices.

Senator GERRY. And you have got that in different industries?

Mr. RICHBERG. In different industries; yes.

Senator LA FOLLETTE. Mr. Richberg, I would like to get back for just a few minutes to the line of inquiry that we were pursuing the other day; namely, how far the N. R. A. has achieved one of the objectives set forth in title I, which was to increase purchasing power; and I understood you to agree that that involved a more equitable distribution of the national income as annually produced.

Mr. RICHBERG. That is correct.

Senator LA FOLLETTE. I notice that chart 34 in this report of the operation of the National Industrial Recovery Act shows that the per capita weekly wage in June of 1933 was $17.99, and that in December of 1934 it was $19.73. Or if you prefer to take the deflated per capita weekly wage, which as I understand it, then takes into account the N. R. A. cost of the index of June 1933, the deflated per capita weekly wage was $25.64 as compared with $25.02 in December 1934 On page 24 of this same document or booklet, I want to read this:

> Another way of picturing what has happened to profits is shown in chart 16, page 26 insofar as the appraisal of the stock market has in it aught of accuracy concerning the prospect for business profits, note that industrial stock prices are at this time also reaching levels of the year 1931. Similarly the National City Bank in its index of corporation profits, estimates that a steady rise is under way. Even more startling is the light placed upon the lot of those receiving dividends and interest by the historical comparison pictured on chart 17, page 27. Note that although pay rolls in December 1934 were only about 60 percent of the total, in 1926 the dividends and interest were 150 percent of their total in 1926. In short, the income enjoyed by those who received dividends and interest was 50 percent higher than in 1926, even though the national income has declined

nearly 40 percent since that date, and the volume of production has declined by one-third.

Then it goes on to say:

Rough as the compilations are, clearly the recipients of profits have not failed to enjoy their proportionate share of the income in the industrial recovery.

I cite the figures, although I grant that they are not conclusive, as indicative of the fact that so far as a more equitable redistribution of the national income has produced, that we have not made the progress which it was hoped would be made, and at some time during your appearance, I would be very glad to have you give the committee your reasons why we have not made more progress toward the attainment of that objective, and constructive suggestions if you care to give them, or to emphasize those you have already given, as to ways and means which, if this device is to be continued, Congress by legislative action can strengthen the hands of those who are to be charged with the responsibility of this administration. I know that we are getting very close to adjournment time, but I wanted to give you an opportunity to think that over, and at some time before you conclude, I would like to have you go into that phase of the situation more fully.

Mr. RICHBERG. I would like to do that, Senator.

I think before you came, I had explained one factor in that particular compilation, and I had referred to the expansion of security issues from 1926 to 1929, part of the period in which there was an expansion of some $13,000,000,000, which accounts for the fact that when you compare 1926 returns with those of 1933, you are overlooking the immense rise that took place before 1929 in the issue of corporate securities, upon which interest had to be paid, for example, or else you had further insolvencies than we did have. And I pointed out that the profits had not been earned in the last few years to justify any such maintenance of dividends and interest on the basis of existing profits. The same tables which are here presented, if you will turn to another one, show that the corporation profits in 1934 were 32 percent of 1928, so the justification out of 32 percent of profits, of paying 150 percent in dividends and interest obviously cannot be made.

Senator LA FOLLETTE. I understand that phase of it, but nevertheless it seems to me that there must be either in the administrative feature or in the law itself that which has prevented our achieving greater progress toward one of the objectives which was emphasized, if you will remember, at the time that this proposal was made, and I think engendered a lot of hope on the part of some people who believed that that is one of the problems that we have to meet and face in this country so far as the results which would be obtained under this law.

Mr. RICHBERG. You will find that the labor share of the national income has increased over this period.

Senator BARKLEY. There is nothing in the law that gave the N. R. A. or anybody else power to prevent the declaring of dividends out of past earnings.

Senator LA FOLLETTE. That is absolutely true, Senator; nevertheless I think that these figures, while explanations can be made of this thing and that thing, are nevertheless indicative of the fact that so far as the achieving great progress toward one of the objectives which this

law specifically sets forth, namely, an increase of the purchasing power that we have not made the progress along that line which should have been made, and I am asking these questions for the purpose of finding out, because I understand we are charged with the responsibility of considering legislation, why these things have happened, and what if anything can be done to correct them.

Senator GORE. Mr. Richberg, I saw a statement a few days ago that during the years 1931, 1932, 1933, and 1934, industry had paid out $30,000,000,000 more than it took in. And last year, 1934, notwithstanding the market improvement, $3,000,000,000 more.

Senator HASTINGS. Before we adjourn——

Senator GORE (interrupting). May I ask another question?

Senator HASTINGS. Yes, certainly.

Senator GORE. Do you happen to have the figures in connection with any such sum as 30 billion which I referred to in my previous question?

Mr. RICHBERG. I just hastily glanced at a tabulation before coming up here, to show what the amount of those issues had been.

Senator GORE. I wish you would put that in.

Mr. RICHBERG. I have asked for further figures on it.

Senator HASTINGS. Before we recess, I would like to call the attention of Mr. Richberg to these facts which I have compiled from the statements that he has handed to the committee this morning entitled the "Employment and Pay Rolls in Selected Industries or Groups of Industries from March 1933 to January 1935." There are 62 of those industries, and in one column is a high since March 1933, the particular high month. And then in the next two columns is December and January; December and January being put in because all of the figures for January were not available apparently. I find if you take 62 of those industries and the best months, you get a total of 7,089,844 persons. If you take the December or January number—January wherever it is available and December where January is not available, and in one instance November—you get a total of 5,975,354, or a difference between these January and December totals as against the best months since March of 1933, of 1,114,490 less than the highest number or 15.7 percent. I find there are only five industries in which the total has increased from 347,630 to 348,130, or a difference of only 500 persons. I wanted to make that statement sometime, and if it has any importance, I thought you might want to correct it.

Mr. RICHBERG. May I thank the Senator for that, because that is one of the points I wanted to bring out.

Senator HASTINGS. You might want to check on these figures.

Mr. RICHBERG. A hasty computation, nevertheless, does bring out the point I wanted to make, and that is that the total employment in a particular month does not represent the number of people who have been employed during the year, and you have brought out very clearly the point that a million more people have been employed during this year than will appear in those employed in December 1934, we will say.

The CHAIRMAN. We will interrogate you tomorrow.

The committee adjourns until 10 o'clock tomorrow morning.

(Whereupon at 12 o'clock noon, the hearing is adjourned until Tuesday morning, Mar. 12, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

TUESDAY, MARCH 12, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Barkley, Connally, Gore, Bailey, Lonergan, Black, Gerry, Guffey, Couzens, Keyes, Metcalf, Hastings.

Also present: M. Blackwell Smith, acting general counsel, National Recovery Administration; Mr. Leon Henderson, economic adviser, National Recovery Administration.

The CHAIRMAN. The committee will come to order.

Mr. Richberg, yesterday when we adjourned I think you had a list of certain industries that had shown an increase or decrease in employment since 1933, and up until December 1934 or January 1935, and many times you attempted to go into an analysis of those figures, but the Senators were so anxious to ask you questions that you did not get to it.

Will you now go into that with such explanations as you desire to make, and I am sure that the committee would appreciate if you can and desire to venture the suggestion that certain industries might be eliminated from the code operation.

STATEMENT OF DONALD R. RICHBERG—Resumed

Mr. RICHBERG. In that connection, Mr. Chairman, before taking up this list of employments and pay rolls, perhaps it might be well to have distributed for the use of the committee, a mimeograph here as to the trades covered by the N. R. A. I understand from Mr. Smith that these have been placed in the hands of the clerk of the committee and are available for the committee members.

The CHAIRMAN. They will be turned over to the members of the committee.

Mr. RICHBERG. I started the other day to read from the early part of this list, Mr. Chairman, and did not get quite through it.

The first group that I endeavored to cover was a list of service trades, including those in which the codes have been completely suspended in administration—barber shops and laundries—and then a list of codes in which the trade practices have been suspended and only the labor provisions remain technically in force, but are not being very well enforced. Those include a very large group, cleaning and dyeing, hotels and restaurants, motor-vehicle storage——

Senator CONNALLY (interposing). On hotels and restaurants, you have not entirely suspended those codes, have you?

Mr. RICHBERG. No. The trade practice provisions have been suspended, Senator, but not the labor provisions.

Senator CONNALLY. They are writing in to me about the hotel codes. You have some hearings on them pending, have you not?

The CHAIRMAN. Draw a distinction of just what you mean there, Mr. Richberg.

Mr. RICHBERG. There is one hearing scheduled, Senator Connally.

The CHAIRMAN. You mean that the hours of labor and wages are still maintained, and that section 7–A is maintained, is that the idea?

Mr. RICHBERG. That is correct. In other words, the Administration has not suspended those provisions, so that they are still effective.

The CHAIRMAN. Those three?

Mr. RICHBERG. Yes; but I say that the extent of their observance throughout these industries varies from place to place. In some localities they are being very well observed. In some, they are being very badly observed, because of our effort to work out some solution of this service industry situation.

That list includes also advertising, bowling and billiards, and shoe rebuilding.

Then there are other approved service codes covering car advertising, funeral service, outdoor advertising, and real-estate brokerage. And there are some service codes pending that have not been approved.

What I wanted to point out to the committee was that this entire list, which is a very large list of employments in numbers, and those which have given rise to the major amount of complaints as to particularly the trade practice provisions and to some extent the labor provisions, are all in a certain general classification as to which one of the questions we desire to present to the Congress was the difficulties involved in this situation. The suggested method was of dealing with them, either through voluntary codes of a local nature where possible, or not dealing with them at all, or dealing with them through agreements.

On the other side of the picture, and I think that should be presented by those who are the most familiar with it and most interested in it, is the fact that you have approximately 3,000,000 persons employed in this group of industries, who are operating under very difficult conditions, very low wage conditions, and very poor working conditions.

For that reason, those responding to that particular interest have strongly urged the maintenance of every effort in this field to continue improvement of labor conditions, at least. The answer from the industry, as in the cleaning and dyeing, is that they cannot improve their labor conditions if they do not have trade practice provisions and if they do not have some price protection.

The next answer to that is that the price protection breaks down because of the fact that it will not be voluntarily adhered to, and the legal sanctions for it are difficult to enforce. Then the service groups, where such compliance broke down, they say that if we cannot maintain a decent price we cannot maintain decent wages.

Frankly, we are laying the problem before you with the idea of presenting all of its factors to you. If you think that it is desirable

for the Administration to leave this field, here is a field. If you see the problems in it and believe that the Administration should endeavor to do what it can in a voluntary way or otherwise in the field, very well; that can be written into the law.

Senator WALSH. Of course that problem is in every field.

Mr. RICHBERG. The difficulty, Senator, in this field is that we have a combination of all of the tough problems. We have the question of the legal obstacles, the question of interstate commerce, and the local areas.

Senator WALSH. It is an extreme situation?

Mr. RICHBERG. Yes; an extremely difficult situation for any sort of price control, because the service is of such a character that it is very difficult to figure the particular cost of a particular establishment, and what is destructive price cutting and what is just competition.

The CHAIRMAN. What is the objection raised by hotels to this policy?

Mr. RICHBERG. You mean as to general codification?

The CHAIRMAN. Yes. To make it applicable merely to hours and wages?

Mr. RICHBERG. I think the great difficulty there, from the standpoint of the hotels, one of the difficulties, is that they have a traditional field of low-paid labor and long hours especially, because of the conditions of hotel operation. I think the better operators distinctly desire to improve the worst features of that condition.

The CHAIRMAN. Is it your opinion that under the definition suggested of business and interstate commerce as related to it, that you could by any stretch of the imagination apply it to the hotel industry?

Mr. RICHBERG. Senator, if you stick to the immediate question of interstate commerce and that which substantially affects it, except for the effect on labor and the purchasing power, I would say that the business itself, its connection, was very much more remote than the ordinary so-called "local business" of manufacturing or mining or something of that kind, which as a matter of fact engages directly in the current of interstate commerce.

The CHAIRMAN. They present about as strong a case of being an intrastate business as any other industry, do they not?

Mr. RICHBERG. In many instances, I think that is true, and I think that is true because the competition in that field shades off very rapidly from the hotel to the boarding house and tourist camp, and every other method of taking care of transients; and apartment house living for permanent residence.

Senator CONNALLY. A hotel does not produce any article of commerce; it merely gives you a place to sleep and something to eat.

Mr. RICHBERG. It provides a place for people traveling in commerce.

Senator CONNALLY. I would say that the only contact I see by the wildest stretch of the imagination was that you might say that because a traveling man who travels all over the country in interstate commerce, comes to the hotel.

Mr. RICHBERG. I suppose if you were not able to maintain adequate accommodations for travelers, it would have a distinct effect upon the amount of travel you would have. I suppose there is a relationship in that.

Senator CONNALLY. But if you can cover hotels, there is nothing you cannot cover, really.

Mr. RICHBERG. I think frankly that in that field you are going pretty far when you get into the hotels, and the barber shop, and the local restaurant.

The CHAIRMAN. Did you have a code for tourist camps?

Mr. RICHBERG. None was taken up. I think there was a request for one. We had a request for codes for almost anything you may imagine for one reason or another.

Senator CONNALLY. How do you get control of bowling and billiard parlors under interstate commerce?

Mr. RICHBERG. You are precisely in the same field as I say. Your relationships are there because of the fact that our whole life is wholly integrated. We have lost that pioneering isolation in different sections of our communities, and there is a relationship between the handling of business and the relationships in every field. I think you have to apply a certain rule of reason. I am speaking frankly my opinion, because I have not had the same opinion, I have had a different opinion from others.

Senator GEORGE. You have an integrated civilization because of the economic side. You have to grow things and market them before you can ship, but you have always had to do that; that has always been the case.

Mr. RICHBERG. That is quite true, Senator.

Senator GEORGE. I realize, and everybody realizes, that now, economically, you have one country and you have much stronger examples, but nevertheless the same condition always will exist.

Mr. RICHBERG. May I just point out in the case of the agricultural life, which is the outstanding example of independent livelihood. However, you have moved out of the period when the Constitution was adopted in this form, and that is that the things which are now used on the farm and are part of the necessary production of agriculture, as a matter of fact come from other States and we are in interstate commerce, and you can stifle the life of the farms and carry it back to a former type of civilization very rapidly if you stop up interstate commerce.

Senator GEORGE. That is true.

Mr. RICHBERG. Your horsepower has been substituted by gasoline power.

Senator GEORGE. When they wrote the Constitution, we were making tobacco and sending it from one State to the other and across the water.

Mr. RICHBERG. Of course there was interstate commerce.

Senator GEORGE. The point I am emphasizing is that you have simply got an intensification.

Mr. RICHBERG. There is no doubt about that.

Senator GEORGE. I recognize that. Your whole jurisdiction, frankly, I presume you concede it, over interstate and intrastate businesses, and especially service trades, depends upon some further step to be taken by the courts if the complete jurisdiction is acquired in that field. Isn't that true?

Mr. RICHBERG. That is correct. I stated at the outset of the first sentence almost of what I said to this committee, because I wanted it to be clear from the start, that the legal obstacles in the way of

carrying out a program of this kind, in the first place, must be reckoned with—they ought to be—but they must be reckoned with at every stage of the proceedings. I think personally, and there is where I have tried to be very careful in my statement, because all of those associated in the administration have not the same point of view, and I want to be fair about it——

The CHAIRMAN (interposing). How many of those industries are there in that classification? How many codes in that classification?

Mr. RICHBERG. This group of which you have spoken?

The CHAIRMAN. Yes.

Mr. RICHBERG. I have given you a list of 17, but I would say that probably you would find, in going over the details of this very large list of codes, that a great many minor codes would slip into the same classification or very close to it. That raises that group of codes which would dispose of a large amount of business.

The CHAIRMAN. What is your recommendation on that group?

Mr. RICHBERG. I will have to give you my recommendation——

The CHAIRMAN (interposing). I mean your personal recommendation.

Mr. RICHBERG. As my own recommendation——

The CHAIRMAN (interposing). I am not asking for the administration's recommendation.

Mr. RICHBERG. My recommendation would be that you should write into this bill a definition of interstate commerce which was surely and safely sound under the decisions of the courts, and I think under that definition it would be necessary to eliminate a large percentage of these localized industries.

That is my personal recommendation, that I think it would strengthen the law, and I think it would aid the administration. But I want the committee to hear those who feel very much more strongly than I do that there should be an effort made to do something in this field. I appreciate the purposes and reasons for that.

The trouble is that I approach it probably from too much of a lawyer's standpoint, and I see the difficulties, and in the difficulties I see also reasons, and sound reasons, why those obstacles are there. I want to be fair to the committee and my own recommendation.

The CHAIRMAN. What would be the alternative suggestion?

Mr. RICHBERG. I beg your pardon?

The CHAIRMAN. As to that group.

Mr. RICHBERG. As to that group, this should be carried forward and I think could be carried forward under the provisions of the act of the type which I have recommended; that is, voluntary agreements can be made by the President through this administration with local groups for the establishment of sound and fair trade-practice standards, and the use of insignia can be employed in order to advertise to the public that these are establishments operated on such standards.

The CHAIRMAN. Would you put in a penalty?

Mr. RICHBERG. No.

The CHAIRMAN. Would you apply any civil penalty?

Mr. RICHBERG. Not except as to the violation of the agreements by those who make them.

The CHAIRMAN. By those who make them?

Mr. RICHBERG. Yes.

Senator GEORGE. That is on a contractural basis?

Mr. RICHBERG. Yes. I want to point out right now that while we have not gone very far along that line, there have been several efforts to utilize that type of activity, that have had with local support some degree of success, depending largely upon the particular communities in which they are operating.

Senator BARKLEY. In writing the definition of "interstate commerce", I can anticipate more difficulties with respect to business generally in attempting to write such a definition as was found by the courts in the Shreveport decision with reference to railroads and in the Transportation Act with reference to intrastate railroads whose business materially affected interstate commerce. To draw a line between the business that is wholly intrastate and a business that although intrastate affects interstate commerce, as the small railroads do, and interstate carriers, it presents quite a difficulty, it seems to me, from the standpoint of a lawyer.

Mr. RICHBERG. Senator, I agree with that. My suggestion was that the definition itself should proceed along the line of the statement of a principle, and that is, those industries actually engaged in interstate commerce and those substantially affecting interstate commerce.

That is practically the suggestion that I have in mind so as to make clear the intent of Congress that those which have only an incidental or secondary effect or a remote effect upon commerce should not be included but if there is a substantial effect, I think very clearly then that it should be within the purview of the act. I do not think that you can write any A, B, C language successfully as to just what businesses all do substantially affect interstate commerce, but I think you can write a definition which is better, where as a matter of fact the matter is left wide open in the present act, which will definitely show the purpose and intent of the Congress, and as a matter of fact will reduce a great many of the burdens of the present administration and a great many of the criticisms on it which proceed from the effort to operate in a field of still too great controversy.

Senator BARKLEY. Of course you get into this situation where some of the Federal courts have held that, although the products of a mine or a factory almost wholly enter into interstate commerce, the Federal Government has no power to regulate the conditions under which that product is produced, which is termed "intrastate business."

Mr. RICHBERG. You will notice that the distinction is made one day by the same court and forgotten the next day by the same court.

Senator BARKLEY. I realize that, and of course nothing is final until it is passed upon by the court.

Mr. RICHBERG. Yes.

Senator BARKLEY. But the child-labor decision, which may have been sound—we have to accept it as such and do so—turned loose a Pandora box of troubles with respect to regulating commerce or the incidents of commerce that transpired wholly within a State but which affect very materially interstate commerce, which are the beginnings of interstate commerce, and I am of the opinion that some day Congress has got to go further than it has ever gone, even if it requires an amendment to the Constitution, to effectuate the ability of the Federal Government to deal with those situations which enter into interstate commerce and without which there would be no interstate commerce.

Mr. RICHBERG. May I say just a word? I have not discussed the law of this, but it is fundamental to our whole consideration. I think

the distinction can be made quite clearly as a matter of general principle. It is difficult often to apply.

In the first place, those matters of commerce which cannot be effectively regulated by the State and require regulation, it seems to me, are clearly within the purview of the Federal Government. When you find the State itself unable to regulate its own local commerce adequately because of the effect of interstate commerce, then I think you have a clear field where the Federal Government authority was intended to go and should go. I think that is one class of cases.

On the distinctions between production and mining and transportation, I simply want to call attention to the fact that the great original expounder of the commerce clause, Chief Justice Marshall, added transportation to the known and accepted definition of commerce, which was traffic and trade. In other words, transportation has been more engrafted upon the definition of commerce than trade engrafted on it. The original definition and purpose and intent of commerce, as it was used and as it will be found in consulting the dictionaries and encyclopaedias of that time was fundamentally "trade" and that is what it does refer to. It does not refer primarily to transportation. That has been transformed into a definition, largely one of "transportation", and then the court has had to recede from that, because perfectly clearly that clause of the Constitution goes far beyond transportation.

Then you take cases like the Stockyard cases, where the transactions are wholly local, and the court finds it necessary to say that those are subject to regulation of interstate commerce, because they absolutely affect the whole life of interstate commerce and the current of interstate commerce.

Then you take the case of mining, which some courts and very recently in extraordinarily antique decisions said have nothing to do with interstate commerce, but when the mine workers strike at the mine and they are restrained in the Federal courts for interference with interstate commerce, it is utterly absurd for the court to turn around in the next breath and say that the labor conditions of mining have no effect upon interstate commerce, the court having just held day that they absolutely are determinative of interstate commerce.

I do not think we can attempt to follow the temporary meanderings of the lower courts now and then from a long line of decisions as to what constitutes commerce.

Senator GEORGE. Your idea is that we can fairly define it for the purposes of this bill, for this administration.

Mr. RICHBERG. Precisely.

Senator GEORGE. And within the law, and the well-established rulings of the Supreme Court?

Mr. RICHBERG. Yes.

Senator GEORGE. I believe you are right about that.

Senator CONNALLY. Mr. Chairman, may I ask a question?

Of course the border line as you have indicated between intrastate and interstate when it comes to the court, is always one that is apt to be decided one way or the other.

Mr. RICHBERG. Yes.

Senator CONNALLY. Don't you think, however, that for the purposes of this legislation, that we could avoid a lot of that by only confining the N. R. A. to those things which are clearly interstate

and—put in the kind of things we are attempting to control, and remove the uncertainty in a legal way, largely, if there is any doubt? If you strike something like a hotel or cleaning establishment, if there is any doubt about, why fool with it? Why not let it be regulated locally?

Mr. RICHBERG. My own notion is that the N. R. A. should first do the obvious and big job at its hand and let the fringes of the job wait.

Senator CONNALLY. That is what I am talking about. You will remove a lot of the objection and annoyance and irritation against the N. R. A. by removing these little two-bit things.

Mr. RICHBERG. I am very strongly of that opinion, and I have to express it.

The CHAIRMAN. I did not quite get your thought. The Senator asked you about specifying particularly what industries should be incorporated in the law by writing them into the law. What is your answer to that?

Mr. RICHBERG. My answer to that is that I thought that the best way to do that was by a definition of "commerce." It can be done the other way. But I thought the best way to do it would be to say that this should only cover interstate commerce or those intrastate operations which substantially affect interstate commerce, but if the Congress desires further to define that, to attempt to distinguish in the law itself, between localized industries, my only point is that it is very difficult to write an adequate definition of that sort.

I think the mandate of Congress directed to the N. R. A. would be followed, and if the mandate was not so followed, the N. R. A. would be stopped very quickly by the courts, not on the question of where the authority might extend, but on the question of what power actually had been given.

I want to call the attention of the committee to the fact that although "interstate commerce" is used in the present act, there is no definite limitation as to the codes that they shall only cover interstate commerce. I would like to make it clear that that was not in the original law. While the penalties were applied only to interstate commerce and transactions affecting interstate commerce, under the law codification is authorized for all trades and industries.

Under the circumstances, when the N. R. A. was asked to establish a code, the only question presented, strictly speaking was, "Can this thing be enforced?" There is no question that under the law we have authority to establish it, but will the penalties apply? Because the penalties apply only to interstate commerce and transactions affecting it.

I want to make it clear that there is in the present law more or less of a mandate to the N. R. A. to cover everything under the sun, and if you want to reduce that mandate, I believe you will clarify the purpose of the law.

Senator CONNALLY. If you should undertake to write a code for something that was clearly intrastate, regardless of whether it had penalties or not, the court would strike it out.

Mr. RICHBERG. I do not think it would reach the court.

Senator CONNALLY. We are only legislating for interstate commerce, and if it is not interstate commerce, it is out.

Mr. RICHBERG. It would only reach the court if it came to the question of enforcing some obligation or penalty.

Senator CONNALLY. Suppose some man sued because his business was being interferred with by this shadow or colorable right and you were exercising it irrespective of the penalty?

Mr. RICHBERG. I question whether some of these codes would be subject to that attack.

Senator CONNALLY. What is the use of making a law if you do not enforce it?

Mr. RICHBERG. The only benefit was that we were trying to aid industry and trade as a whole in organizing itself and getting itself in better shape, and to protect the interests of all concerned. We were not under any mandate to confine the operations of the N. R. A. within a strictly interstate commerce field, and therefore when these industries came in and planned to go along with the general program and be helpful to it, naturally it was appropriate for the N. R. A. to say, "Very well, we will accede to this wish."

And there are probably a very large number of industries of this minor group as to which the interstate commerce factor may be of minor importance. I have not analyzed them or attempted to.

No question has been raised about a great number of these codes. They have been operating without substantially any opposition in one of these small industries after another.

Senator BARKLEY. Would it be practical for us to write into the law what industries are to be covered, like coal and lumber and so forth?

Mr. RICHBERG. Frankly, I think it would be better to write your definition on the basis of "interstate commerce" and then hold the N. R. A. up to it. I was trying to make clear that if that was done, you could either provide by a mandate or by implication for the elimination of a great many of these codes out of which trouble has arisen unnecessarily.

The CHAIRMAN. Well, proceed, Mr. Richberg.

Senator CONNALLY. Before we get on that point, what I meant a while ago is not necessarily to denominate them all in the statute, but I am talking about the matter of policy of the N. R. A. Don't you think it is a sounder policy for the N. R. A. if you make this definition that you are talking about, limited to interstate commerce? In applying that and in interpreting it, to confine it to those things where the authority is clear, rather than to get out into this border line and stir up litigation and friction and trouble and rows.

Mr. RICHBERG. I have thought that for 18 months, and all that I would like to do is to explain that in expressing my opinion there were others in the administration that disagreed with that opinion.

Senator CONNALLY. Just one other thing and I will let you alone. Isn't it true that a lot of these industries that you speak of, that were not strictly interstate, that they were keen to get into the N. R. A. when it first started? They thought they were going to get a lot of advantage from it?

Mr. RICHBERG. Yes.

Senator CONNALLY. Isn't it true that most of the kicking now by a large number of them, or a large part of it is from those fellows who got in and the thing did not work like they wanted it to?

Mr. RICHBERG. Yes.

Senator CONNALLY. Is not most of your trouble coming from these cases on the border line, that are either intrastate or are very doubtful?

Mr. RICHBERG. A great deal of it is coming from that.

There is another class of codes that I want to speak about right now, because it is important to the limitation of the functions of the N. R. A. which also should be considered by the Congress.

We have, for example, one very important code covering an enormous industry, and that is the trucking code. That is also a source of great difficulty.

I think everyone will admit the tremendous desirability of some regulation of the hours and conditions and trade practices in that field. As a matter of fact, the question has been before the Congress for a long time as to whether it should not be regulated by the Interstate Commerce Commission. Quite clearly, if the Congress decides that should be regulated, then that field of activity should be regulated by the Interstate Commerce Commission, it should not be regulated also by the N. R. A. except that you may have the necessity—and this is the point I am trying to make—of protecting the labor conditions in those industries, because you have always kept labor conditions away from your regulatory commissions dealing with rates and service; in other words, you may find it desirable to have a division of functions and to permit a labor-provision code for such an industry, while leaving the regulation of all of the trade practices and so forth to the body to which you commit it; but I wish to point out that if you do not provide at this session of Congress for regulation of motor transportation by somebody, that is, by the Interstate Commerce Commission or in some such way—that you have a very serious need for the regulation which has been supplied in that code, with all of its difficulties, in the N. R. A. It is a very salutary and helpful thing for the industry and the public interest—it has been done in that code with all of its difficulties, and I want to point out that that is one of our difficult codes, because of the far sweep of operation, and yet the effectiveness for the public interest and the labor interest and the employer interest have been very considerable in what has been done under the N. R. A.

There again is a question of policy. If the Congress is going to pass a regulatory measure, well and good. If the Congress is not, then this power really should be left for the value of its present exercise.

That applies not only to the trucking code, but there are other codes. For example, we have had pending for some time the question of the regulation involving telegraph and telephone companies. Now, as a matter of fact, under the Federal Communications Commission, you have a regulation of trade practices for those companies, and quite clearly that is where that regulation should lie, but again that does not cover the protection of labor conditions in those particular codes. That is another major question of policy, frankly, which I think the Congress should fairly face, as to whether you are going to leave these regulated industries without the protection, as far as the labor provisions of the code, that are given to other interstate commerce industries, because they are clearly interstate commerce ndustries.

Senator BARKLEY. Under the Transportation Act, and under the various amendments to it, the labor situation on the railroads is taken care of by the creation of boards especially designed to deal with them.

Mr. RICHBERG. That is correct.

Senator BARKLEY. Separate from the Interstate Commerce Commission, which deals with rates and practices.

Mr. RICHBERG. Precisely.

Senator BARKLEY. If the Congress should include in such regulation trucks and busses, as some of us have been advocating for a number of years, and still favor, would you think that the Labor Board or the Board of Mediation that is now in existence, or some similar organization, should be set up to deal with the labor problems of the interstate trucking and bussing, or would you have that regulated by the Interstate Commerce Commission, which does not regulate that as to any other transportation facility.

Mr. RICHBERG. I think, Senator, you have this situation. In the railroad field, you have well-organized labor, therefore what was mostly needed was the services of a board of mediation and conciliation, because the conditions of labor could be worked out by collective bargaining if you protected that right. In the trucking field, you have a very disorganized field. You need something more at the present time than merely the mediatory efforts of the Federal Government in the establishment of tolerable labor conditions. As a matter of fact, the labor conditions in that field have been intolerable for recent years in the vast numbers of people employed. They have been very dangerous for the public from the standpoint of the long hours of operation, as well as harmful to the employees.

I do believe that you need during this developing period, the aid of the codes of fair competition to cover and protect against unfair competition in the very labor field, in other words, to provide for the floors of wages and to provide for the maximum hours and to provide for minimum labor conditions in this field. Otherwise, as a matter of fact, your very attempt at regulation itself is going to be more or less interferred with by the constant interplay of those conditions affecting labor.

The CHAIRMAN. Those are the two main ones?

Mr. RICHBERG. Yes. The labor provisions should still be left, is what I want to emphasize.

Senator BARKLEY. A day or two ago, you testified that about 90 percent of the business that is coverable under the N. R. A. is now affected by the codes?

Mr. RICHBERG. That is our estimate; yes.

Senator BARKLEY. If this new policy which you have suggested under a definition of "interstate commerce" and "intrastate commerce that affects interstate commerce" be adopted, to what percentage will that lessen the coverage of the N. R. A. as to the total business of the country?

Mr. RICHBERG. We are guessing somewhere between one-fifth and one-seventh, Senator.

Senator BARKLEY. You mean a reduction of that much, or a total coverage?

Mr. RICHBERG. A reduction of present coverage.

Senator BARKLEY. So that if you now cover 90 percent——

Mr. RICHBERG (interposing). You might get down to about 75 percent, we will say. This is a very rough approximation, Senator. The public-utility group includes about 2,000,000 persons, but considering that quite a percentage of that, 300,000 of employment is under banking, I do not know whether that would be——

Senator BARKLEY (interposing). Under what?

Mr. RICHBERG. Under banking.

Senator GORE. Will you restate that? I did not catch it.

Mr. RICHBERG. This public-utility group, division no. 10, supposed to cover about 2,000,000 persons employed, but since about 300,000 of that estimate is under banking——

Senator BARKLEY (interposing). You do not attempt to cover banking?

Mr. RICHBERG. Oh, yes. The labor provisions are covered, and the hours, and so forth, and there have been a certain amount of trade practices which particularly apply to the Investment Bankers Code, and if I am correct, the Investment Bankers Code has been considered as an outstanding success by the Securities and Exchange Commission and the bankers.

Senator BARKLEY. I did not know to what extent you had controlled the hours of labor.

Mr. RICHBERG. They have also been covered.

Senator GORE. They do not have many hours of labor now, do they?

Mr. RICHBERG. I think you are speaking of the officers rather than the workers. [Laughter.]

The CHAIRMAN. Proceed, Mr. Richberg.

Mr. RICHBERG. If the committee will permit me, I will take some of the high spots in this group of employment and weekly pay rolls, because in connection with the figures here, I would like to give a little instance of what has happened in these various codes.

Take the first group, which is automobile parts. You will notice that from a low of 199,000 employed in March 1933, with pay rolls at $3,290,000——

The CHAIRMAN (interposing). Tell us when the blanket codes were applied, so that we can get the date.

Mr. RICHBERG. The blanket codes generally went into effect from August 1 to September 1, 1933.

The CHAIRMAN. All right.

Senator GORE. Mr. Richberg, can you indicate when the principal increase in these employees took place?

Mr. RICHBERG. Yes; that is what I am giving you right now, Senator.

The high of employment in employment and pay rolls since that time was reached in April 1934, when the employment rose to 462,000, and the pay rolls to $11,930,000. At the present time, the last figures for January—and I understand for February are probably higher—the January figures are 433,000 with a pay roll of $10,170,000; that is, as to automobile parts.

Senator GORE. Have you it there for July 1, 1933, the beginning of the fiscal year?

Mr. RICHBERG. I haven't it on this, but, Senator, I think on our charts, which are in the book of charts, we have for all of the industries there charted the complete course, month by month. I have on this tabulation only these limited months. What I put on is March 1933, the high point since then, and the present level.

Senator COUZENS. May I ask you what percentage of the automobile industry is under the code?

Mr. RICHBERG. What I have been speaking of refers to parts and equipment manufacturing, of which the greater part is under the code.

The CHAIRMAN. It does not include automobiles?

Mr. RICHBERG. No; the automobile manufacturing is the next code, and that code is the automobile industry, the manufacturing industry.

Senator COUZENS. May I ask you what you mean by the top line there, "automobile manufacturing, automobile parts and equipment"? Why do you distinguish between those two groups?

Senator BARKLEY. That is general, and it is broken up into two sections below there.

Senator COUZENS. You see the heading on there that it includes manufacturing automobiles as well as parts.

Mr. RICHBERG. That is not my understanding of what it is intended to include, Senator.

Senator COUZENS. You do not mean to imply that all of those figures there apply only to automobile parts and do not include any manufacturing of automobiles?

Mr. RICHBERG. I understood that automobile manufacturing was found separately in the next item.

The CHAIRMAN. What does that mean, "automobile manufacturing independent"?

Mr. RICHBERG. I know that the next item includes the actual automobile manufacturing plants. Mr. Henderson tells me that the first figure is a combined figure of automobile manufacturing and parts. This explains what I could not see in the figure before. Of course you add to the straight manufacturing operations, the parts manufacturing operations by the automobile manufacturers. I was figuring that the two were about equal, and I could not see that these two are equal.

Senator COUZENS. That second figure there does not include the automobile manufacturer exclusively, does it, because it must be greater than that?

Mr. RICHBERG. The second figure?

Senator COUZENS. Automobile manufacturing "ind."; what does that mean, "industry"?

Mr. RICHBERG. Yes, sir. That includes the major companies now operating in the field.

Senator COUZENS. What percentage of the industry is under the code? Have you any figures as to that?

Mr. RICHBERG. The entire industry is under the code as far as we understand. This concludes the report of all of the major companies; the so-called "Big Three" of General Motors, Chrysler, and Ford.

Senator COUZENS. They are under the code, all under the code?

Mr. RICHBERG. All under the code. And the minor companies also.

Senator COUZENS. May I ask you just what percentage of this increase of the automobile pay roll and the number of employees do you attribute to the N. R. A.? You certainly cannot include it all?

Senator GORE. I did not get the question; you will pardon me?

Senator COUZENS. I asked what part of this increase in the number of employees on the pay rolls might be attributed to the N. R. A.?

Mr. RICHBERG. I attribute it almost entirely to N. R. A., Senator, if you will accept the direct and indirect effects. I say this because, frankly, I had this out with the leading automobile manufacturers assembled here in Washington within the last 2 months, and not one of them disputed the fact that the rise of the automobile industry was

caused very largely by the effects of the increased purchasing power which was developed all along the line, largely through the operations of the N. R. A. and the A. A. A.

Senator COUZENS. Both?

Mr. RICHBERG. Yes, sir. And that they, therefore, were the beneficiaries of those two programs more than any other industry in the country.

Senator COUZENS. That raises another issue. I do not assume you have any figures to distinguish between the A. A. A. and the N. R. A. have you?

Mr. RICHBERG. No; I have no distinction as to where purchasing power that has gone into this increased automobile consumption has come from. There are plenty of figures to show the rise of farm income, but I have not got it applied to this. But as to the exact and direct effect of the code, I can point out that, because that will be found particularly in your average hourly earnings, the average wage, and in your average hours per man per week.

Senator COUZENS. Where do you find that?

Mr. RICHBERG. It is not on this chart. Taking up those factors, the average hours of work per man per week is approximately 49 in April 1929. It continued to fall, and fell to about 21 in September 1932. In May 1933—that is, before the N. R. A.—the average was 41 hours apiece and declined to 26 in September. The latest average for December 1934 was about 36. I can add to that something that has been the bitter complaint of the manufacturers of automobiles particularly—that by their efforts to spread work they have reduced hours and given employment, and at the same time the net payment to the employee has been cut down so that there has been very severe criticism of the amount of earnings. They have therefore objected to that requirement which continually spread work, so that they were then subjected to the corresponding criticism that the actual weekly earnings were so low.

Senator COUZENS. That is, the average weekly pay rolls per person.

Mr. RICHBERG. Yes.

Senator COUZENS. But how do the aggregate pay rolls compare?

Mr. RICHBERG. The aggregate pay roll, as is shown here——

Senator COUZENS (interposing). After they had divided up this work.

Mr. RICHBERG. The aggregate pay roll since the N. R. A. went into effect has very largely increased.

Senator GORE. Do you have the figures before you showing the increase in employment from March 1, 1933, to the date of the adoption of the code?

Mr. RICHBERG. We have not, unfortunately, of the automobile manufacturing. We have not the original figures of the employment in March. Taking the whole thing together, we had in March 1933, 199,000. I have not here, unless Mr. Henderson can give it to me, the figures of the increased employment up to June of 1933.

Senator GORE. What date did the code take effect?

Mr. RICHBERG. The automobile manufacturing code took effect and was approved August 26, 1933. Let me show you what happened in that industry.

Senator GORE. That is what I want.

Mr. RICHBERG. The number of passenger cars produced in the United States was 621,000 in April 1929. This declined steadily to

October 1932, to the number of 48,700 cars. On the recovery, this rose to 354,700 cars in April 1934. Then production has fallen off to 78,500 cars last November, and the latest report shows 292,800 cars in January 1935. I understand the figure is approximately 350,000 in February.

Senator GORE. A little more estimated this month?

Mr. RICHBERG. Yes. You understand, of course, that this rise and fall has got to be shown as a trend in the automobile industry, because of the seasonal character of its production.

Senator GORE. Of course.

Mr. RICHBERG. It is wholly a question of trend.

Senator GORE. Do you have it for July 1933?

Mr. RICHBERG. There is a chart on the automobile manufacturing and automotive parts in the chart book, which appears on page 8, which shows the entire course from 1929 down to date. I will see if I can approximate the situation as to the particular month you stated—which was what, Senator GORE?

Senator GORE. July 1933.

Mr. RICHBERG. July 1933, on an index of about 50; July 1934 is on an index of nearly 80. There is a correspondence between the 2 years in the same month.

Senator GORE. You do not have the units?

Mr. RICHBERG. I have not on this chart, Senator. I was giving you the proportion.

Senator GORE. What was it in March?

Mr. RICHBERG. In March 1933?

Senator GORE. Yes.

Mr. RICHBERG. In March 1933 it was away down to about 25.

As to the average hourly earnings, in 1930 the peak was 78.2 cents an hour. It fell to 55.6 by January 1933. It rose to 73.2 per hour in October 1934. The latest average, for December, was about 71 cents.

The average weekly wage was nearly $36 in April 1929, and it fell to nearly $14 in September 1932. It rose just over $26 in April 1934.

Senator GORE. That was based on the number actually employed?

Mr. RICHBERG. Yes; this is the average weekly wage. Declined to slightly less than $19 in September—there is a case of spreading the work in a slack season—and the latest report shows an average of $25 a week in December. In other words, from the $36 average of April 1929, the recovery has been to approximately $25 or $26 as far as the weekly wage is concerned.

Senator KING. That does not include the wages in the repair shops, for which a code has been recently promulgated.

Mr. RICHBERG. As to garages, and so forth?

Senator KING. Yes.

Mr. RICHBERG. No; this is wholly automobile manufacturing and parts.

The next industry in this group is the bituminous-coal industry, and that has one remarkable factor which I want to call to your attention. In March 1933, with 310,103 persons supposedly employed pay rolls amounted to $3,393,000. The increase, the highest since that date, has been November 1934, with 366,000 employed. The increase of pay rolls was at its height in March 1934, with pay rolls of $6,510,716. I want to point out that with a very small increase

in the number of men employed, pay rolls in that industry are almost doubled under the code.

Senator GORE. Do you have the number employed in March, when the pay roll was at its peak?

Mr. RICHBERG. Unfortunately, this method giving the high months—it happened to be the high in November, but in March, 1934, the number was between 310,000 and 360,000, which I would say is approximately 350,000, we will say, as a guess.

Senator KING. Does that include the number of persons whom the big interests in the bituminous coal industry denominated, "bootleggers"?

Mr. RICHBERG. I presume it does not include any of the so-called "wagon mines," because they do not report, and that is what you regard or would be called "bootlegger group."

Senator KING. I do not like the term, but it has been applied, I am told.

Mr. RICHBERG. That is the reason I used the term "wagon mines." It is not only a question of large interests. The number of coal mines in this industry is very large, but these so-called "wagon mines" in the price-war period, were practically put out of business. They could not operate because they could not sell coal in the market as low as it could be sold by the big mines.

Senator KING. There are many of those mines operating now in Pennsylvania.

Mr. RICHBERG. Yes; with the stabilization of prices, those mines came back into the market. I think there were something over 1,300, and possibly higher than that in Pennsylvania alone that opened up. The smaller mines that operated and then came back in here are recorded, but the so-called "wagon mines", the little one-horse affair——

Senator KING (interposing). They are not included?

Mr. RICHBERG. They are not included.

Senator KING. They are not included in the figures which you have just given?

Mr. RICHBERG. No; there is that much production outside of that, and that much employment.

Senator KING. Do you think your figures are accurate?

Mr. RICHBERG. I do not think there is any question about the accuracy of our bituminous-coal figures, because we have had the Bureau of Labor Statistics for a long time, and on top of that, the code authority went into it with their own basis of statistical background to get the information.

I do want to say this, that the wages and hours reports prior to the code were in many instances exceedingly unreliable. We found as a matter of fact in the code investigation that the alleged wage rates that were reported as being paid in the industry bore almost no relationship to those really being paid in certain sections of the country where wages would be reported on a basis of three dollars and something a day, and as a matter of fact miners were being employed as low as $1.13 a day, and perhaps even worse rates.

Senator GORE. Was there any reason why March 1934 was the peak month in pay roll, because that would be a little unseasonable, would it not?

Mr. RICHBERG. No; I think that would probably be because of that fact. Mr. Henderson has pointed out that with the April 1 wage question coming up, there was undoubtedly a heavy stocking up in March at that time. Also, as I remember it, that was a period of a general rise in industrial operations calling again for an increased consumption.

Senator GORE. I thought it was a peculiar time for that.

Mr. RICHBERG. March is a good month for soft-coal production.

Senator KING. Would not the output of coal, as well as the number of employees, be determined in part by your export? For instance, we exported to Canada for many years, between 8 and 12 million tons annually. That has been diminished by reason of the fact, owing to tariff restrictions, and our trade with Canada has slumped a great deal. Canada has opened up a number of mines in Newfoundland and elsewhere. I was wondering if the exports did not have something to do with the output, and when you determine the output, you have something to do with wages and the number of employees.

Mr. RICHBERG. I understand that the percentage effect of the export is not very heavy in this industry, when you view it as a whole, Senator, but I would like to point out the condition of the industry from the production side in a very brief statement.

Senator KING. Just a moment. The production would depend too upon the use of oil.

Mr. RICHBERG. That has been a steady factor in breaking down the bituminous-coal industry. The increase of oil and gas as competing fuels, and electricity, has been a steady factor.

The amount of production in the bituminous coal industry in 1932 reached the lowest level of 20 years. It was approximately 60 percent of the average of a 10-year period ending 1929.

Senator GORE. Could you state the tonnage?

Mr. RICHBERG. I cannot at this moment. I will cover what I have here if I may.

The mine realization had been steadily falling for 5 years prior to the depression, and the result of course was being reflected in declining wages to the miners and the depression of the entire industry. In 1925 the average realization was $2.04 a ton at the mine, and this kept dropping down——

Senator GORE (interposing). That was to the wholesalers?

Mr. RICHBERG. That is, to the producer or operator. This was dropping down steadily, so that in 1932 it got to $1.31, and for the first nine months of 1933, to $1.15 a ton.

The code went into effect in October 1933, and under it, the realization at the mines was materially increased. The average for the last 3 months of 1933 was $1.65. That is against $1.15 for the first 9 months. The further price increases followed, general increases in wage rates and shortening of hours.

For division 1, that is the largest division including the Pennsylvania and Appalachian field, the increase was approximately 19 cents, as compared with the wage-cost increase of 21 cents a ton.

I want to show what this industry has done, because I think it is fair to the industry to show its contribution in this situation.

With an increase of 19 cents in realization, the wage increase was about 21 cents.

The financial showing of the industry under the code, though, has improved on account of the volume of production and elimination of unfair practices and stabilization of the price relations.

For the period of November 1933 through June 1934, division 1, that is this major division of the Appalachian region, showed realization over cost, and this does not include capital charges, of 1.3 cents per ton. I think you will all admit that is not an extraordinary profit showing.

Division no. 4 showed 7 cents per ton, division no. 5 13 cents per ton, and division no. 3 showed costs exceeding realization of 6.1 cents per ton.

Senator KING. Does that mean that that is after all overhead was paid, and taxes, and all gross charges?

Mr. RICHBERG. That means everything excepting any capital charges. It does not include payment of interest or dividends or anything of that sort. It does include a depletion charge.

Senator KING. Depletion that is obtained under the provisions of the revenue act based upon the formula therein contained? As you know, the Internal Revenue Office provides for the method of determining the depletion.

Mr. LEON HENDERSON. Yes; that is the method that was used uniformly for this whole report.

Mr. RICHBERG. I do want to point out this increased wage—this increased employment—has been reflected in increased prices in this industry, and here is an example of the fact that an increase of the prices is not necessarily, because of that, an evil. You have no such increase of prices here as permits of an excess profit making. There are no profits, practically, at all, in any real sense, but you have the possibility of increasing the price enough to pay a decent instead of a starvation wage to over 300,000 men, and I think that the record of the bituminous-coal industry in the code, and under all of its difficulties, it has been a very difficult and embarrassing code, is an outstanding and major achievement of the situation.

The CHAIRMAN. Is there much criticism of it?

Mr. RICHBERG. There is a great deal of criticism within the groups of the operators from the standpoint of the imperfections and difficulties of the operation. It is very difficult to operate a cooperative competitive system. The industry is highly competitive; there is terrific competition for markets which are common to various areas of production. From two different areas of production, where there are price stabilization associations—if you want to call them that, or sales associations—they are getting into very fierce competition in a common market.

Senator KING. You could not expect it to be otherwise, could you, when for instance, in some States or districts, they have coal measures which run 27 to 37 feet in thickness, and you mine a superior quality of coal and mine it very readily, and you are close to the railroads. You would expect there that the cost of mining would be very much less than in some districts where you have to sink your shaft.

Mr. RICHBERG. There are tremendous differences, of course.

Senator KING. And you remember in Great Britain where they tried to rehabilitate the coal industry after the war, and there were a lot of marginal mines that they had to close down. So you would expect a great deal of competition.

The CHAIRMAN. What is your reaction to the attitude of the industry itself as far as the code is concerned. Do they want the code to stop?

Mr. RICHBERG. I think I can say without any embarrassment at all that the industry is 100 percent united on maintaining the code. I won't say a hundred percent, but 90 percent.

The CHAIRMAN. What would you say about the automobile industry?

Mr. RICHBERG. Senator, I should be perfectly fair and explain there is a bill pending before the Congress for a more drastic handling of the whole soft coal situation, and those supporting that bill, which includes the United Mine Workers and some of the employers, naturally prefer that solution, but I mean in the absence of such a solution, there is not any question about the whole-hearted support of the industry for that code.

Senator KING. Would you be surprised if some of us received a large number of letters protesting against the continuance of the code, from consumers and from some employees?

Mr. RICHBERG. It may possibly be, Senator, that there is a confusion between this code and the retail solid fuel code, which I am not talking about, as to which there has been much more criticism, because that is what reaches the consumer. I am speaking wholly of the mining code. I think you will find the amount of criticism in that is extraordinarily small.

Senator KING. You mean of the mining?

Mr. RICHBERG. Yes.

Senator BLACK. May I ask you one question before you leave your figures? You put in there, as I understood it, that the increased price or cost of manufacturing coal was 19 cents?

Mr. RICHBERG. No; I said the increased realization was 19 cents as compared to an increased wage cost of 21 cents.

Senator BLACK. What is the average wage cost to the total cost of mining? Do you have that? How much goes to labor?

Mr. RICHBERG. It varies enormously, but Mr. Henderson tells me I can make a safe statement by saying 70 percent as a rough approximation. It varies considerably by mines, in line with the suggestion of Senator King.

The CHAIRMAN. The labor cost is perhaps larger than in any other industry?

Mr. RICHBERG. Yes; about as large as any industry there is.

Senator GORE. This bill you speak of to take over the industry largely, goes a lot further than this arrangement here.

Mr. RICHBERG. Oh, yes; this bill which is pending requires the United States Government to assume responsibility for taking marginal operations off the market, as I understand.

Senator GORE. And I believe it declares in express terms that coal is a public utility.

Mr. RICHBERG. I understand so.

The CHAIRMAN. That bill is not before our committee at this time.

Senator GORE. I was going to ask whether he had studied it enough to express an opinion as to its constitutionality.

Mr. RICHBERG. I have not studied it, Senator.

Senator GORE. I would not want to ask you then.

Mr. RICHBERG. It does not come before the committee, but I only wanted to point out that there was that desire in the industry.

The CHAIRMAN. Let us get to bolts, nuts, and rivets.

Senator GORE. Nuts, particularly. [Laughter.]

Senator KING. Have you finished your coal disquisition?

Mr. RICHBERG. I do not want to say anything more on that. I was going to pass that rapidly, Senator——

Mr. CHAIRMAN. I know there is a very small increase in that, because of the small number of people employed in it.

Mr. RICHBERG. That is correct. I would call your attention to the fact that the pay-roll increase has been very substantial in proportion. It is more than double.

Senator KING. But the theory of the Pittsburgh-plus, that base applies to nuts and bolts and so on.

Mr. RICHBERG. I understand there is no basing point system in that operation.

The CHAIRMAN. It is related to other industries, isn't it?

Mr. RICHBERG. It is related to many other industries in various mechanical ways.

The CHAIRMAN. And it does enter into interstate commerce?

Mr. RICHBERG. There is no question about that, as to its products.

The CHAIRMAN. So that is not one that in your opinion would be eliminated?

Mr. RICHBERG. No; I would not think so.

The boot and shoe industry is worthy of a little attention, because that is so spotted in different sections of the country that different sections have different reactions to it, so the whole picture is rather important.

You find there an increase in employment of a comparatively limited amount. From 186,700 in March 1933 to a high in August 1933 of 213,000. I will take the January figure at the present time, 199,000, but you find the pay-roll increase is quite substantial. From $2,380,000 in March 1933 to a high of $3,760,000 in March 1934, which is the corresponding month, and a present pay roll of $3,242,000.

Senator KING. People are not buying more boots and shoes?

Mr. RICHBERG. I call attention to that, Senator, because of course there is not a great deal of difference, you observe, in the amount of employment in that industry because of the comparative stability of the employment, but you do find reflected a very pronounced increase in the pay roll, which means necessarily an average improvement as far as the wage earner is concerned.

Senator KING. But the output is greater?

Mr. RICHBERG. The output is greater also, I assume.

The CHAIRMAN. Let me ask you, Mr. Richberg; has there been some conflict between the interests in that industry in the East and those in St. Louis and other places?

Mr. RICHBERG. That is one of the reasons why I said you will get a very spotty condition, because there has been a good deal of friction between the members of the industry in the different parts of the country, and there has been a transfer of operations going on from one part of the country to the other from time to time, with very bitter complaints on the effects on the industry from one section of the country while the other section is prospering, but if you look at the picture as a whole, which is the only way we can look at it from

an employment standpoint, you will see that there have been very substantial benefits under the codification.

The average hours in this industry in 1929 were 44.3. By June 1932 they had dropped to 36.3. That, to some extent, might be regarded as a spread of the work proposition, because of a limited amount of work. By July 1933 they had risen to 49.7. That was before the code's adoption. By December they were back to 32.7.

Senator KING. That is because as you say, of the dividing of the work.

Mr. RICHBERG. Yes; by December 1934, to the 1933 hours, and the 1934 hours is 34.9, or 35 hours. In view of the maintenance of the pay rolls and employment, I think that those hours figures are particularly significant. The wage increase is shown in this. The wage per hour is 49.3 cents in 1929. The hourly wage had dropped to as low as 31.9 or 32 cents, we will say, in May of 1932. That is, from 49 cents to 32 cents. From this date to August 1933, the wage never rose above 35 cents. In August 1933—I have a mistake in my figure so I cannot give it, but later the wage jumped to 43 cents and has continued to rise until it reached a high in September 1934, of 51. In December the wage was 50.7.

In substance, what you have there, is a present hourly wage in that industry which is higher than the wage per hour in 1929. You have a reduction in the average hours worked from 44 hours in 1929 to substantially 35 at the present time, so that you have a spreading of the work, and at the same time an improvement in the hourly rate even over the 1929 rate.

The CHAIRMAN. Mr. Richberg, may I ask you, has there been much unfavorable reaction within that industry, and such criticisms that the authorities have dominated from one section of the country in the administration of the code?

Mr. RICHBERG. I know there have been criticism of some concerns in certain areas in that regard, but I think it is fair to say for the industry as a whole, that the industry as a whole has been behind the code. There have been minority complaints from different groups.

The CHAIRMAN. Let me ask you your reaction to those complaints. A great deal of complaints that I have heard is that, in the administration of the code, certain sections have dominated, and that favoritism has been shown. Do you think it would be proper in the administration of the law, that some code authority should see that the industry itself should be equalized in authority that is administering the code?

Mr. RICHBERG. I do not think there is any question about that as a proposition, Senator.

The CHAIRMAN. Would you make that as one of your suggestions in the changes of the law?

Mr. RICHBERG. I would be very glad to make the suggestion that any such code authority should be made—any committee or code authority should be made truly representative of the industry in its sectional interests and its interests in volume or quantity, if you will.

Senator KING. What is your reaction to this question? Assuming, and it is not a violent assumption, that in the codes, a few of the larger interests formulate the code, they are the principal men, who meet together in hotels or elsewhere and frame the principal factors of the code, and they select themselves as administrators of the code and pass upon the laws and regulations which they formulate, and

pass judgment and so on, and act as court and jury. Do you think that is fair? Do you approve of that?

Mr. RICHBERG. I do not think that is fair, Senator, but I think your question involves what authority is given to these authorities. As far as I know, the only type of complaint, or the major type of complaint is that which concerns any operation to affect prices. The other practice provisions, and I have suggested very strongly the elimination of any practice permitting price fixing under the egis of any code authority or any other way, except so far as you are actually preventing destructive price cutting as a measure of unfair competition or preventing the waste of a natural resource, but the majority of practice provisions in the codes are of a type which seems to me do not open themselves to the sort of criticism that you have suggested, Senator.

Senator KING. Then hundreds of complaints which have come to me are without foundation. Yet I have made investigation and found they are true.

Mr. RICHBERG. I do not mean that at all. What I was trying to point out is this: that the trade-practice provisions that are very helpful in preventing unfair competition involve preventing misrepresentation by advertising, secret rebates, commercial bribery, and defamation of competitors. Those are in over 500 codes.

Senator KING. You have got all of those in the Federal Trade Commission, practically.

Mr. RICHBERG. That is quite possible as an action, but I would like to meet that in just a moment.

There is false marking or branding and false invoicing, espionage, enticement of employees, imitation of trade marks, piracy of design, and so forth.

That type of provision, and also the provision which is aimed at the monopolistic practice of destroying a market by going and selling below cost, certainly cannot be regarded as oppressive to small enterprises; in other words it is very much to their protection, more so in most instances, than it is for the larger enterprises.

When you enter the field of price provisions, then the question involved is whether you are aiding in holding up a price at an artificial level, which is one thing that cannot be defended, or whether you are preventing a monopolistic concern from cutting prices to the point where it drives all of its little competitors out of the market and then controls prices. I think you must make a distinction between those two practices or operations.

Senator KING. You have not answered my question yet.

Mr. RICHBERG. May I come right back to it?——

Senator KING (interposing). I would rather that you would answer my question and we will get along much faster rather than have a very long dissertation, admirable though your dissertations are.

Mr. RICHBERG. I am very desirous to answer your question, but I found it very difficult to answer without stating what I was talking about. What I was pointing out was that the function of the code authority in that field of fair trade practices is one that is not likely to be abused, but where you enter the field where there is likely to be, that of price control, I do not think the code authority should be

given any authority whatsoever that is not subject to Government supervision. If you are going to have any such authority, and that was the suggestion I made in the opening of my statement, and that was that no public authority should be exercised by any private body. That, I think, should be written into the law as a principle.

Senator GORE. The shoe business is less concentrated and monopolized than any other large industry in the country.

Mr. RICHBERG. I am glad to hear that.

Senator GORE. There are more individual units operating on their own account.

The CHAIRMAN. What is your answer to Senator Gore?

Mr. RICHBERG. I said I was glad to hear that. I had always understood that there were certain groups that were regarded as very powerful in that industry in certain sections of the country, but there is very keen competition between the various groups and sections.

Senator KING. There are some dominant factors in New York, Massachusetts, and Missouri.

Mr. RICHBERG. I understood there were some strong groups in various sections.

Senator GORE. There was the control of machinery. Can you put in the record the number of pairs of boots and shoes manufactured in 1929, 1933, and 1934?

The CHAIRMAN. You can supply the record with that later if you haven't it at hand.

Mr. RICHBERG. I can give you the percentage of declines in production, but I cannot give you the figures. I will ask to have them presented for you.

Senator BLACK. May I ask you a question there about boots and shoes, because several of us do not understand it? This schedule that you give us here shows the amount that was paid per month or per week?

Mr. RICHBERG. That is a weekly pay roll unless it is marked "monthly." In one or two instances, I think the figures—for instance, in iron and steel——

Senator BLACK (interposing). I am speaking of boots and shoes.

Mr. RICHBERG. That is weekly.

Senator BLACK. I see it figures up that they were paid $12.75 a week in March 1933, average, and $16.21 in January 1935, average.

Mr. RICHBERG. I gave the average wage per hour which, as I said, at the present time has risen to practically 51 cents.

Senator BLACK. That is a weekly and not a monthly figure?

Mr. RICHBERG. Yes.

Senator BLACK. That is what it figures up when you divide the pay roll by the number employed in each instance. It shows $12.75 a week in March 1933 as average and $16.21 in January 1935 as average.

Mr. RICHBERG. You are giving weekly earnings?

Senator BLACK. If this is weekly pay roll and weekly employees? In other words, I divided the 3,242,000 by 200,000 approximately, and it gives $16.25.

Mr. RICHBERG. That is approximately what it would be.

Senator BLACK. The average weekly.

Mr. RICHBERG. Yes.

Senator BLACK. And back in 1933 it was $12.75. So there was an increase in the average earnings in January 1935 over the average earnings in March 1933 of that amount.

Mr. RICHBERG. Very definitely an increase. I can give you that figure exactly. Wage earners in 1932 was getting $14.94 a week on the average. In November of that year, $12.70. The 1934 average is $17.22, and in December 1934 the average weekly wage is $16.43.

Senator BAILEY. Mr. Richberg, I wish to get this matter of boots and shoes straight. Is this table submitted here the effect of the increase of employment and pay rolls?

Mr. RICHBERG. That is correct.

Senator BAILEY. As I read it there, it was 186,000 in round numbers in March 1933?

Mr. RICHBERG. That is correct.

Senator BAILEY. That went up to 213,000—the month is not designated.

Mr. RICHBERG. You will see right next to it August.

Senator BAILEY. It is 190,000 in December 1934. That is a gain of a little bit less than 4,000 employees, isn't it?

Mr. RICHBERG. Between those 2 months.

Senator BAILEY. That is from March 1933 to 1934.

Mr. RICHBERG. Yes.

Senator BAILEY. In January 1935, you have 9,000 more, which makes it 13,000 as the gain in the number of employees.

Mr. RICHBERG. Yes.

Senator BAILEY. The gain in the pay rolls was about 1 million dollars.

Mr. RICHBERG. That is correct.

Senator KING. Pardon me, Senator, I do not know whether I understood you.

Senator BAILEY. I am speaking of boots and shoes.

Senator KING. But I find in a given month—I do not see what month that is——

Senator BAILEY (interposing). The month at the top is March 1933.

Senator KING. I find that in March the employment was 213,000.

Mr. RICHBERG. That is in August 1933.

Senator KING. And then in December 1934 it is only 190,000.

Senator BAILEY. It dropped back, you see, by 13,300 from the high. I wish to compare that with the profits. I have here a tabulation. In 1933, the profits in this industry were $12,254,000 and in 1934 the profits were $13,234,000. That is a $1,000,000 gain, or 8 percent. The net worth, however, dropped from $176,000,000 to $166,000,000, so there is a loss of $10,000,000 in the net worth in the same period, and the difference between the profit as compared with the net worth appears to be the difference between 6.9 percent in 1933 and 8 percent in 1934, which is a gain of 1.1 percent, with a loss in capital investment of $10,000,000. I just ask your reaction about that.

Mr. RICHBERG. The prices for the finished goods, Senator, in this particular industry have not fluctuated with the violence that has been experienced in a good many others. The lowest level of prices has been, at one time, about 21.5 percent below the 1929 level, and the finished goods in 1933 and 1934 reported only about 7 percent below the 1929 average. I do not know the factors that enter into that.

Senator BAILEY. I was comparing the employment with the profits. There is a gain of 1.1 percent on the capital invested, notwithstanding the increase you have here of 13,000. But there is your loss in your net worth of $10,800,000. Wouldn't you say that any gain that had been made to the extent of 1.1 was offset by these other factors?

Mr. RICHBERG. I am not questioning the gain to the industry, but I am pointing out that the effects upon the workers have been a substantial increase in the amount of earnings over the low period, although the number employed has not increased so largely. This is one of the industries in which we have not had a large addition in employment, but you have had an improvement in the pay rolls which, of course, is a very substantial improvement.

Senator BAILEY. I have here figures showing the loss of about 50 percent between 1933 and 1934 in the cotton mills, and the profit on the capital invested in 1934 was only about 1½ percent. Of course it is the profit that employs the worker. You will agree with me on that, will you not?

Mr. RICHBERG. I will agree with that if the industry is not making a profit, it is not going to go forward and employ more people.

Senator BAILEY. You cannot pay wages out of capital. Our cotton mills went away up and now they have gone away down.

Mr. RICHBERG. They have had a period, however, of better general conditions than they have had for 10 years.

Senator BAILEY. I will say to you—I think you know it, and if you do not, the cotton mills anticipated both the A. A. A. and the N. R. A. and worked night and day to produce goods in anticipation of the rise in prices after the processing taxes were to have been in effect, and after the N. R. A. also should have been in effect. They were planning to sell goods after these acts went into effect and make profits compared to the prices on the goods prior thereto. That accelerated them tremendously, and as I recall, the cotton index of output in the manufacturing of cloth rose from a point of 2.86 compared with a low of very much lower than that. But it is now back. Don't we have to reconcile a situation with facts like that?

Mr. RICHBERG. May I point out, Senator, and I would like to point out to the rest of the committee, that that supports very strongly the precise statement I was making the other day as to the effects of N. R. A. upon employment prior to its going into effect. It was very pronounced in the cotton industry.

Senator BAILEY. That was a pronounced tendency in the recovery. They went in early.

Mr. RICHBERG. They overstocked for a time being and had to have a recession as a result.

Senator BAILEY. They sold the goods made prior to these increased costs as if they were made under the increased costs and reaped a profit, and you can see the condition, that there was a gain. There was a difference between seven millions and three and a half.

Mr. RICHBERG. Yes.

Senator BAILEY. That was anticipation. That was an artificial thing, and we cannot create those anticipations any more.

Mr. RICHBERG. Shall I continue with this list, Mr. Chairman?

The CHAIRMAN. All right, Mr. Richberg.

Mr. RICHBERG. I could go down this list, but it looks as if it will take a long time, and if you wish me to do so, I will just pick out a few of the major industries of particular interest.

We have just been speaking about cotton goods and textiles and I would like to call attention to that industry, which is found on the second page, where you find a rise from 307,000 persons employed, to 446,000 persons employed.

Senator BAILEY. What industry is that?

Mr. RICHBERG. Cotton textiles. As a matter of fact, there was an immediate rise following the adoption of the code, of approximately 146,000 persons employed. This also shows an increase of the pay rolls from $2,787,000 to $5,787,000.

Senator GORE. In what period?

Mr. RICHBERG. Over a period of substantially less than a year. From March 1933 to April 1934. At the present time, in January 1935, notwithstanding the conditions referred to recently by Senator Bailey, you do find the employment still holding up as high as 416,000 with pay rolls at $5,525,000.

Senator BAILEY. Now Mr. Richberg, let me ask you a question. We know, I think, that at the present time the cotton mills are not making money and are not selling goods. That is the information that comes to the Members of Congress. How long can we hope to be paying this 416,000 of employees, which is a gain of 109,000? How long can you hope to hold it if the cotton mills are not making money?

Mr. RICHBERG. Well, Senator, all I can do is to point out the continuing rise and fall which occurs in all of these large industries, owing to overstocking, and then a decline of your market, and then a revival of your market. We have been through precisely the same thing in almost every large industry. Of course it is obvious in the automobile industry. It occurs continuously in the iron and steel industry. It occurs in the cotton-textile industry.

Senator BAILEY. There are 30,000 less workers now in January 1935 than there were in April 1934. That is a loss of 30,000 in employment within 10 months.

Senator BLACK. Where do you get that figure?

Senator BAILEY. On the second page of the sheet which is supplied to us, and under the title of Cotton Goods Textile Industry.

Mr. RICHBERG. What we have retained under the code is the point I wanted to make. You have retained some control of this situation, so that when you reach a period of overstocking, instead of having a demoralization of price cutting and wage cutting and a sloughing down into an industrial depression in that industry, and then a new rise and restoration of the prices and wages, all of which is greatly disturbing to the industry and to the employees, you do have a cushioning all through this industry of these cycles.

Senator BAILEY. What is it that we may do by legislative action if we undertake to rewrite the N. R. A., that will arrest this downward tendency in employment?

Mr. RICHBERG. As a matter of fact, this downward tendency of employment is inevitable in any industry in the cycles when it overproduces, and simply has to wait for a new market. I do not think you can possibly avoid that; but we can cushion that, as we are doing now under the N. R. A. codes—cushion the shock to the industry, and particularly to leveling employment, as is being done under the present code.

Of course, you are familiar with the fact that there is a very strong effort in the industry, as an industry, to regulate its production when they find it is getting out of line, and to hold down that production so that you simply do not pile up stocks that cannot be absorbed in the market.

Senator BAILEY. I think that industry realizes that probably more keenly than any other industry in America.

Mr. RICHBERG. I think it did; and it has gotten itself together with a great many discordant units to work out a program which, while not perfect, has had a great deal of success; and there I think you will find that the testimony from the cotton textile industry, as a whole is that they would not know how to get on without their code—without the ability to carry forward the codification of this industry—with the conditions that they have been able to build up and take advantage of.

We faced in this industry the most difficult type of conditions—exceedingly low-wage conditions, conditions of sectional rivalry and sectional differences in living conditions, and methods of operation; and yet, by the cooperation developed between the employers in the industry and by the aid of cooperation with the Government, they have tided over the tremendous difficulties of this industry with only the break-up of one very bad strike situation, which I believe lasted about 30 days.

We have at work in this industry, not only from the standpoint of the industry itself but the standpoint of Government, all of the planning agencies which can be developed to try to produce a stabilization of the conditions in that industry and to protect profitable operation of big and little enterprises and steady employment of labor. We have at the present time these reports which have been brought in from these different phases of the problem—the Federal Trade Commission report on the entire industry, a most comprehensive report; the Labor Statistics report on labor conditions; and the textile planning committee is now working on that matter in the N. R. A. I think here is a very strong example of the first code. It was an experimental advance, you might say, into an unknown field. In many ways it set the pace—it provided the form of the codes.

Senator BAILEY. But still we have, with respect to this, a loss of 30,000 in employment since April 1934, and we are now at the point of 416,000; and we know that mills are closing down, we know that they are overstocked and employing their labor at the expense of capital. What is the prospect for arresting that downward tendency?

Senator BLACK. May I ask you a question? I cannot tell whether that is 418,000 or 446,000.

Mr. RICHBERG. That is 446,000.

Senator BLACK. It is poorly printed on my copy.

Senator METCALF. Mr. Richberg, in the last 30 days there has been about 2,000 hands dropped out of work in Rhode Island on account of the mills closing. What is the reason for that?

Mr. RICHBERG. I cannot tell in that particular situation, except the statement which Senator Bailey made, which I believe is a reflection of the general condition, and that is that textiles have been constantly in the situation of getting overstocked and having to drop off employment and closing for a time until they could pick up.

Instead of just shutting down mills, what they have been trying to do is to reduce their total production equitably throughout the industry so as to save the situation instead of hitting it hard in certain communities.

You have an example of the effect of the unfortunate way of handling the situation where you have to close down a mill entirely.

I want to point out that this high figure of April 1934, Mr. Henderson tells me, was brought about by strike anticipation, and there was a heavy production at the time and an increase of employment to meet that situation. In other words, you had a rather unusual peak.

How to iron out all the fluctuations in an industry of this character, with its vast number of small concerns and preserving the independent competitive attitude, I do not think that you can possibly assume that you can arrive at anything resembling a 90-percent perfection in accomplishing that problem, but if you do 75 percent of the job, that is something.

Senator METCALF. Hasn't there been a large increase of importations? Have not the Japanese sent in a great many goods?

Mr. RICHBERG. Mr. Henderson tells me that in January of this year, importations are higher than the total of 1934 from Japan. In other words, there is a definite influx there of competitive goods.

Senator LONERGAN. The last figures I saw on our foreign trade, starting in 1929, and I think up to 1933, we had a drop of about 75 percent of our manufactured products, and the products of our farms. Isn't that loss of foreign trade largely responsible, or at least in part responsible for this lack of employment?

Mr. RICHBERG. Of course, Senator, the loss of our foreign trade is just that much out of our productive possibilities. That is quite obvious.

Senator LONERGAN. And is not this a fact, that the factories in this country operating in normal times on supplying the needs of this Nation could supply all of them in 7 months and 2 weeks?

Mr. RICHBERG. That depends entirely again on what you regard as the needs of the country.

Senator LONERGAN. Based on experience.

Mr. RICHBERG. That is also based on the assumption that we have consumed all that we ought to or could consume. I am not at all sure that the families of this country have yet absorbed the amount of production or have come anywhere near to what they could absorb if they had the purchasing power.

Senator LONERGAN. I agree with you there.

Mr. RICHBERG. I think we can still absorb a great deal. And also, this is what has developed in the course of the last 20 or 30 years, and continuing in development over many years, and that is the rise of new industries and new forms of employment. The figures, which I cannot give at the moment but as to the number of persons employed in the so-called "service industries" within the last 10 years, are quite extraordinary; in other words what has happened is a shift of people from pure primary production of consumable goods into all forms of new services which affect the lives of the people, which as a matter of fact do give employment to a vast number of new people. Of course, all of the employment in the automobile industry and the byproducts is something absolutely new within approximately 20 years; and you can go then through the entire scale of trucking,

automobiling, motor stations, through the filling stations and garages, and you have a whole line of employments taking care of several millions of persons which we did not have 20 years ago.

Senator LONERGAN. What is the differential given to a southern cotton manufacturer over a New England cotton manufacturer?

Senator KING. While that is being ascertained, may I say——

Mr. RICHBERG (interposing). I thought it was a $1 a week, but I would not want to say with assurance.

Senator METCALF. Isn't it $2.56?

Senator KING. We started out to have automobiles for everybody. Every baby in the United States has not an automobile yet, so the demand of the public has not been supplied yet. That is an illustration of many of the trades and industries. The demands are increasing. I do not know whether we will ever get to the limit of demands and aspirations of the people for new things and new goods.

Senator LONERGAN. But we must find the purchasing power.

Senator GERRY. Mr. Richberg did not answer that question.

Mr. RICHBERG. On the differential?

Senator GERRY. Yes.

Mr. RICHBERG. I understand that the differential which existed prior to the code has been very distinctly decreased under the code. I thought that the differential amounted in the fundamental minimum to a $1 a week. I will have to get you the exact figures because I may be entirely wrong on certain bases of that. I will have to check on that.

The CHAIRMAN. Please supply that.

Mr. RICHBERG. Yes. There is a differential.

The CHAIRMAN. Before we adjourn, I want to ask you about this retail trade on pages 3 and 4. It seems that the employment there is quite large. Would that come within the suggestion that you made of elimination, because of intrastate character?

Mr. RICHBERG. I do not think, Senator, that you can safely eliminate the direct outlets for interstate commerce in the consideration of the factors which substantially affect interstate commerce. I think that we do this very properly: I think we can distinguish between those retail outlets which have a substantial effect on interstate commerce and those which do not. Such an effort has been made under the codes to distinguish between the small retail enterprises in small communities, the local store. On the other hand, when you face the amount of interstate commerce that is now directly interrelated with the retail trade, of which the chain store is a strong example, it is pretty difficult to avoid the conclusion that you cannot have an adequate regulation of interstate commerce conditions and protect those conditions if you do not protect the conditions of the outlet of the interstate commerce on the whole. As a matter of fact, the retail-trade groups, if I may be bold enough to say so, I think you will find are about as strongly supporting the necessity and the wisdom and the advantage of code regulations as any groups in this country. That does not mean that every little storekeeper feels that way, but I am speaking of the retail groups as a whole, as they have been organized and have presented their views, and that represents a great mass of small enterprises.

I would like to go into that because I would like to report to you, when the committee has the opportunity, the exact effects upon the

general retail trade and upon retail drugs of the code operation in its road aspects. I think it is very significant of the benefits that are possible under the act.

The CHAIRMAN. We will go into that tomorrow.

I would like to say to the committee that it was hoped that we would have an executive session this morning, but we have proceeded so late that it is impossible, and I wish that the committee would meet at 2 o'clock in the committee room of the District of Columbia in the Capitol, so that we may discuss certain matters in executive session.

(Whereupon at 11:50 a. m., the committee adjourned as noted.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

WEDNESDAY, MARCH 13, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Barkley, Connally, Gore, Costigan, Clark, Black, Gerry, Keyes, La Follette, Metcalf, and Capper.

Also present: Senator Patrick A. McCarran; Mr. Blackwell Smith, acting general counsel, National Recovery Administration; Mr. Leon Henderson, economic advisor, National Recovery Administration.

The CHAIRMAN. The committee will come to order. We will continue with Mr. Richberg.

Mr. Richberg, if you will proceed now and finish this analysis that you wanted to make, please.

STATEMENT OF DONALD R. RICHBERG—Resumed

Mr. RICHBERG. Mr. Chairman, we were discussing at the close of yesterday's hearing, I believe, the cotton textile code.

The CHAIRMAN. I thought we had gotten to the retail trade.

Mr. RICHBERG. If I may suggest, Mr. Chairman, so as to keep the matter clear, I would like to go back to one or two of the previous codes and then forward to that.

The CHAIRMAN. All right.

Mr. RICHBERG. The code in the list following the cotton textile code, to which I would like to refer briefly, is the electrical manufacturing, excluding radios.

It appears from the tabulation that there was an employment of 109,600 in March 1933, with a pay roll of $1,663,000; that that had increased by June 1934 to 171,600, which has been substantially sustained to this date.

Also, the pay rolls have increased in a greater proportion than the employment, as shown by a top pay roll of January 1935 of $3,533,000.

I might point out in connection with that code a sample of the sort of question that has arisen under the codes and created a great deal of discussion, which proved to be an altogether empty one. There were very vigorous charges of an alleged monopolistic character in connection with that code. It happened to be one investigated by the so-called "Darrow Board", and the board found in its report, which was far from friendly to the N. R. A., just what we had been

pointing out right along, and that was that the complaints of the so-called "independents" were not directed against anything in the code whatsoever, but were directed at a monopoly of certain lamps—electric light bulbs—which was a monopoly sanctioned under the patent laws and had nothing whatsoever to do with the N. R. A. or the antitrust laws and could not be affected by them.

I have raised that point because that occurs frequently in the industrial set-up.

The CHAIRMAN. Did the Darrow report give both sides of that controversy?

Mr. RICHBERG. It referred to the controversy and found that the chief cause of the complaint was based upon the effect of the patent monopoly.

I simply turn aside at this one industry, because it recurs over and over again, because complaints of monopoly power are raised by independent or smaller groups when the monopolies are primarily based upon patents, and it has been presently clear to those who participated in the N. R. A. administration that either we should accept the fact of the effects of the results of a patent monopoly and their effect upon business, or we should proceed to deal with the question of the patent laws; but it is not fair to ascribe all of the difficulties resulting from control of business through patent monopolies and patent pools to the N. R. A. which has nothing to do with them, and can do nothing about them, and it will do nothing to relieve that charge of monopoly to have the antitrust laws enforced morning, noon, and night. It has its source in the patent laws.

The CHAIRMAN. Is it your observation that the independents in that industry would like to see this law expire on June 16?

Mr. RICHBERG. As far as I know, the complaint about it—it was a rather minor group. I do not think that it represents but a very small fraction of that industry, and the actual operation of the code has been improved considerably from time to time. It has been a very helpful code in many ways to the industry. I think on the whole the industry is for it.

May I say in that connection, Mr. Chairman, I think it is very much worth while to bring out at the present minute, because the members of the committee may not appreciate the one-sided view that they may be getting at the present moment. I have had repeated requests by various means of communication, letters and telephones, and so forth, in the last few weeks, for bringing to this committee the sentiments of an overwhelming majority of the men engaged in industry and labor, in favor, in fact, I might almost say truculently insisting upon the maintenance of the codes and the N. R. A.

Those voices have not been heard simply because the opportunity has not yet been presented. It was understood that the committee was starting on the investigation of certain charges and that we were expected to present the views of the N. R. A. on that matter. It was not regarded as necessary for the great bulk of American business to come forward and meet particular charges of a 5 or 10 percent group in the entire group.

The CHAIRMAN. Mr. Richberg, is there any way, and if there is, which in your opinion is the best way to ascertain from these various industries in which these codes have been placed, as to what their opinion is for the extension of the N. R. A. or for its extinction.

Mr. RICHBERG. I would like to present that very frankly to you, Mr. Chairman, because this has been the problem that has arisen in the last week, as far as I am concerned. The code authorities have been insistent that they should be heard, and that their voice should be heard in this situation as representing great bulks of industry.

It seemed to me that if the code authorities were too insistent upon their position, the question might arise as to whether they were groups of people particularly interested in maintaining a trade association. As a matter of fact, these code authorities represent the great mass of the industry engaged. They can speak authoritatively, and the trade association representatives can, and if you desire, the representatives of these industries themselves will come here in battalions to tell this committee what they think about the N. R. A.

The CHAIRMAN. I do not know how the other members of the committee feel about it, but I do not want to see battalions come here. I am just looking for a simpler way of ascertaining the sentiment.

Mr. RICHBERG. That is the reason, Mr. Chairman, that I have rather discouraged these code authorities. There was a large meeting the other day of these code authorities held, and they wanted to come before the committee. It seemed to me that the committee might have the feeling that we were organizing or desirous of organizing a march on the committee to show this attitude of these authorities.

Whatever way that you desire, that presentation can be made, but I want to point out at this moment to the committee that the most diverse elements in our industrial life have all agreed, and within the last few months, or even in the last few weeks, upon the absolute necessity of an extension of the N. R. A.

I have here a brief list, but I want to call your attention to the fact that the chamber of commerce, which certainly represents one faction of business, by a vote of 1,495 to 419, has gone on record in favor of new N. R. A. legislation.

On the other side, the American Federation of Labor has gone on record completely and unanimously in favor of the absolute necessity of the extension of N. R. A.

The CHAIRMAN. When was this referendum taken by the United States Chamber of Commerce?

Mr. RICHBERG. The report on it was made to me in a letter dated December 28, 1934. The referendum was concluded, I believe—it is dated November.

In addition to that, the Business and Advisory Planning Council, which was organized under the Department of Commerce, is almost unanimously on record to the same effect of the absolute necessity of an extension of N. R. A., and they are ready to appear at any time, as are these other bodies.

I am not the representative of these various groups. I can only speak from an administration standpoint, and what I have endeavored to do, Mr. Chairman, was to try to present as impartially as I could to you, a picture of the diverse views on the subject of this legislation, and not come as an advocate of a particular point of view, but these groups are groups of advocates and they represent the entire structure of American business, industry and consumer.

The CHAIRMAN. We will try to find out the sentiment of industry, all of them, as far as possible. Will you finish up your analysis of

those, and then Senator King is desirous of asking you a series of questions?

Senator KING. Perhaps not today.

The CHAIRMAN. We want to get through with Mr. Richberg if we can.

Senator KING. I have not had the time to read his testimony yet.

The CHAIRMAN. We can bring him back at any time that any member of the committee desires.

Mr. RICHBERG. The next large industry to which I want to direct attention is one of peculiar importance and interest in connection with the N. R. A. codes, and that is the iron and steel industry.

I want to state very briefly the problem which was involved in the presentation of the iron and steel code, and this matter is so thoroughly misunderstood in its complexities and has been so completely misrepresented, even on the floor of the Senate, within recent days, that I think it worth while to state what the actual situation was.

When the code was presented, there was in effect throughout the iron and steel industry a multiple basing-point system of fixing prices. The statement has been repeatedly made, untruthfully, that that was developed under the code. The code had nothing whatsoever to do with developing such a system. The multiple basing-point system for fixing prices; that is, for quoting prices, developed out of the so-called "Pittsburgh-plus decision" which prohibited the fixing of prices on a single basing point.

Senator KING. Do you refer to the decision of 1925 or 1926?

Mr. RICHBERG. It was earlier than that; 1924. Following that, the multiple basing-point system developed in the industry, and there was no attack upon it, right or wrong, from the Federal Government during this entire development.

When the code was presented, the code presented nothing except the existing system. It did not present a new monopolistic basing-point system, or anything of the sort. It presented merely the existing system of quoting prices which was being carried on by voluntary agreements, and the code was presented as a voluntary agreement of those presenting the code, and has never been enforced except as the voluntary agreement.

The only question legally arising then was whether this voluntary agreement was lawful. If it was a monopolistic practice, our sanctioning it under the code would not make it lawful.

Those who represented the industry claimed that it was a legal and valid agreement. We left them to the proposition that they had to sustain that, but that in practical experience, we would endeavor to see how it operated. Meanwhile, they operated to that extent at their peril.

As a matter of fact, after the code was adopted and investigation was undertaken by the Federal Trade Commission, a report was made upon the system.

Senator KING. Was that the report to the President?

Mr. RICHBERG. Yes.

Senator KING. You have not made your report yet to the President?

Mr. RICHBERG. Pardon me, Senator. I was referring to an earlier report. I may say in this connection that there are two reports which are now in process of being issued and will be issued by Friday,

I believe; one by the Federal Trade Commission and one by the National Recovery Administration, on the basing-point system, so that we will have a thorough ventilation of that question as an economic and legal problem.

Senator KING. Are those the reports which were to have been filed with the President at a date prior to this?

Mr. RICHBERG. I do not know when the date was, Senator. They have been in preparation—yes, it is quite right; December 1st.

Senator KING. And the Federal Trade Commission filed its report, but you did not?

Mr. RICHBERG. We had a report prepared also, Senator, but the reports had different points of view, and the President asked to have the parties exchange their views before they filed their final reports. The Federal Trade Commission and the N. R. A. have been exchanging their views, and, as a matter of fact, they have not reconciled certain differences between them, as far as I know, to any particular extent, and the reports therefore will present two different points of view, but on that problem, that is an economic and legal problem and a very complex and difficult one, and not the simple problem that those who simply denounce it without knowing anything about it would have you believe.

It is a very complicated problem. I am not expressing any opinion on the wisdom or the validity for that particular system, but I want to point this out, that this was the choice presented to the N. R. A. when the steel code was presented. Under that code it was perfectly clear that we were going to put thousands and thousands of people to work at higher wages if we could get the code adopted. Under the code we were not changing the system practiced in the steel industry at all. If that practice was monopolistic in character, putting it in a code did not validate it. The law could still be enforced.

As a matter of fact, one of the complaints of the steel industry was that after the adoption and approval of the code, other departments of the Government did go right ahead investigating the validity of the practice, which was as a matter of fact their right, and that is their right under the present law.

But with that background, I want to point out to you the positive benefits, and then I would like to ask if there is a single man in this committee or the Congress of the United States, who, faced with the proposition of putting 75,000 people to work at better wages, would have refused to take the steps necessary for that purpose, merely because he wanted to have fought out right then and there whether the system that had been in operation for 10 years was monopolistic or not.

That is what I referred to the other day when I said that there was an academic question, because we could not settle it except by long years of litigation, but the one thing we could do was to see that thousands of men were put to work. And this is the result in the iron and steel industry.

Senator BARKLEY. Where does that appear on this report?

Mr. RICHBERG. On the fourth page at the bottom. March 1933, 229,000 men, with a wage monthly, an average monthly pay roll, of $13,690,000.

June 1934, 400,000 men employed, with an average monthly pay roll of $42,000,000; and at the present time you will see there are 351,000, with an average monthly pay roll of $34,000,000.

Part of that increase arises from increased business, but that is only a part of the increase.

The extraordinary thing that was done, and this is the industry which has given the most complete demonstration of what could be done, the extraordinary thing that was done was that despite a decline in business, that the number employed were held on the pay rolls, and their wages increased, and there is not an industry in the country that can present a better record of what has been accomplished and what could be accomplished under this law, than the iron and steel industry, because, as a matter of fact, the industry was so integrated and so organized in a group of a limited number of concerns, that the industry could operate as a whole and police as a whole their operations and make their competitors live up to these requirements in regard to wages and hours, so that we have practically 100-percent compliance in this industry.

Now, it is perfectly true, and the question can be raised as to whether when you have such a basis of cooperation in an industry, it may be taken advantage of and used as a basis of agreements of a monopolistic character or price-fixing agreements, and it is perfectly obvious by anyone who studies the records of the steel industry that the prices have been more or less artificially controlled in that industry by some means or other, but the point I would make to the committee is that there is nothing in the code that authorized such control. The code provides for a competitive system.

There are advantages under the basing-point system which may be regarded as artificial advantages, because of the fixing of prices at the basing points. But one reason for the insistence throughout the industry, big and little, upon the maintenance of those artificial advantages is that the entire industry and all of its satellite industries have grown up under that system of price-fixing, and it would involve tremendous dislocation of industrial operations and wide-spread unemployment in one place, taken up by new employment in another, to suddenly change that pricing system, which, as I say, is a perfectly sound reason as far as the industry is concerned, regardless of monopolistic effects, for insisting upon the maintenance of the system. But what I wanted to point out to the committee, which is most important here, is the fact that in the first place that by this operation it was possible to do one of the most remarkable industrial jobs of coordination that has ever been done in this country, and that is, that from the time the code went into effect down to date it obtained a maximum of employment, and at the same time it elevated the wages enough so that the individual workmen did not suffer. The individual workman gained greatly in his weekly earnings, employment as a whole in the industry gained enormously, and purchasing power gained enormously as has been here shown.

Take the other side of the picture. I saw the statement the other day, not having the exact quotation I won't make anybody responsible for it, but I understood it was made even on the floor of the Senate, that the code permitted price increases to the extent of even 800 percent. That is the sort of exaggeration of trifles, which does not indicate a very sound consideration or a mature judgment on the facts of the industry.

The price increase in the steel industry can be stated in very simple terms. In 1929 the average per gross ton of finished steel was

$51.45. At no time since has it been below the April 1933 level, $41.96. After going up to $49.77 in May 1934, prices settled down to a level of $47.50 during the last 6 months.

In other words, price increases in the steel industry from the low of 1933 has been the enormous amount of—you will pardon my using the word "enormous" with sarcasm, because I do not want to have it misunderstood in the record—from the amount of $41.96 to $47.50.

That is the total of the average price increase from a depression low, and it has not yet come within speaking distance of the price of $51.45 prevailing in 1929.

Against that, on the other side of the picture, is the rise of pay rolls from the low of $13,000,000 to $42,000,000 a month, and from the wage standpoint, as to increase in wages, from the low of $11.52 to the present level of $19.12 a week. That is weekly earnings.

Senator WALSH. What has been the increase in the volume of business?

Mr. RICHBERG. The increase in the volume of business has been a fluctuating one. It went down to a low in the 20's, I think as low as 26 or 27 percent. It has gone up almost as high as 60 percent, and now is down somewhere in the 40's, as I remember.

Senator WALSH. What has been the fluctuation since the code was adopted?

Mr. RICHBERG. Since the N. R. A. code there was at first a distinct advance in production at the time the code went into effect. Coincident with the other businesses, there was a rise in steel production in anticipation partly of the increased prices. Then that rise fell off in the winter of 1933. There was another strong rise that carried through to July of 1934, falling again seasonally more or less at the end of 1934 and starting to rise again in the last 6 months of 1934.

Senator WALSH. How much? What has been the fluctuation—5 or 10 or 15 percent?

Mr. RICHBERG. The fluctuation has been about from 27 percent, from as low as that to as much as 65 percent of ingot capacity.

Senator WALSH. You mean in increased volume of business?

Mr. RICHBERG. Yes. That is a supposed percentage of capacity.

Senator BARKLEY. That is of production?

Mr. RICHBERG. Yes.

Senator BARKLEY. It does not necessarily mean volume of business, but it might be supposed to be that.

Mr. RICHBERG. Presumably that business is absorbed and it means production at the time.

Senator LA FOLLETTE. Mr. Richberg, coming back to this statement that you made concerning the difference of opinion between the Federal Trade Commission and the N. R. A. on the basing-point system, could you tell the committee whether or not it was the position of the Federal Trade Commission that the basing-point system which you stated was in effect for 10 years prior to the code, was illegal under the decisions of the court and the existing law?

Mr. RICHBERG. Substantially, I think that was the position of the Federal Trade Commission. I think that has been their position, that it was illegal under the decisions of the courts, and in consistency with the previous rulings of the Federal Trade Commission.

Senator LA FOLLETTE. I was under the impression that some of those connected with the Federal Trade Commission were of the

opinion that they had to have an amendment of the existing law, but I may have been misinformed.

Mr. RICHBERG. I am not sure as to the differences of opinion in that matter. I will state the fact that it is wholly a reasoning on implication. That which is involved in the basing-point system has not been passed upon. As a matter of fact, there are two decisions of the Supreme Court passing upon trade associations involving basing-point systems, in which the Supreme Court has specifically held that they were not monopolistic, not passing upon the basing point itself, but holding that an association operating under a basing-point system was not monopolistic.

It leaves the question very much in doubt. There is all the difference in the world between a multiple basing point and a single basing-point system. Of course, you can expand a multiple basing-point system to the point where it is a basing point at every mill and nothing more than an f. o. b. pricing method. On the other hand, you can allocate your basing point system to a limited area which has been substantially the position taken, in substance, by the N. R. A. as the most desirable position, and that is to have a basing point of plants within a radius of perhaps 50 miles or so for convenience and use in the trade and aid in quoting prices. There are thousands of prices involved in the use of steel products, and that is a matter of great benefit, as far as the whole industry is concerned, if you could have that type of area basing point.

If you have adequate area basing points, I frankly cannot understand myself any basis upon which anyone could claim that there was anything monopolistic or artificial or unfair in such a system. It would simply be an improvement of an ordinary f. o. b. mill price basing system.

Between those two possibilities and the present system, there is vast ground for argument as to what is simply an economic question from a business standpoint, or whether there is any legal question involved in it at all.

It is a very difficult question to go into, and it requires a highly technical knowledge of the business to understand the effects of the basing point, because they produce competitive areas in a way which can only be understood by those who have studied very carefully the effect of the basing-point price quotation.

Senator LA FOLLETTE. For the moment I was not so much interested in the economic arguments pro and con as I was to ascertain just what the difference of opinion was between the Federal Trade Commission on the one hand and the N. R. A. administration on the other as to the effect of existing law and the decisions upon this practice in the steel industry.

Mr. RICHBERG. As I say, these reports are coming out this week, and I only want to say this, that I do not want to unfairly advance a summarized idea, but I can only say, to the committee that from the standpoint of the N. R. A., there is both involved a very difficult legal and economic problem, that on the side of the economic problem the N. R. A. opinion has been that a better system from the view of fundamental economics could be devised and an improved basing-point system could be devised, that such a system would be undoubtedly legal. That as to the present situation, there is a serious question as to whether the system is not entirely legal, which is, of course, the

contention of those who have been openly operating it for years and are perfectly willing to submit the question to the courts.

The Federal Trade Commission, I think, takes a stronger position in favor of its contention that the basing-point system is itself an extension of the illegality of the original Pittsburgh-plus system.

Senator LA FOLLETTE. I would suggest the advisability of this committee obtaining copies of those two reports when they are published.

Mr. RICHBERG. We will see that they are available to the committee immediately.

Senator BARKLEY. This has nothing to do with the steel industry, but while you are on the Pittsburgh-plus proposition, I would like to ask you if what I have heard in the automobile industry is true. We all know that every man who purchases an automobile purchases it at a certain price f. o. b. Detroit, or wherever it is made, which includes the charge which would accrue for an actual shipment of the car by freight to the point of purchase, but as a matter of fact these automobiles are carried all over the country by truck loads at an infinitely lower cost than would be charged by freight, so that the purchaser is paying for the car as if it were carried by freight. Do you know whether that is true or not?

Mr. RICHBERG. That is true, and also this which is true, Senator, and that is that the cars are assembled or have been under previous practice, which I assume is still going on, at other points, but the charge regardless is made f. o. b. Detroit plus freight.

Senator BARKLEY. So that the purchaser of a car is being overcharged for the cost of transportation?

Mr. RICHBERG. The purchaser of the car is being charged in many instances the same "artificial freight", so-called, that has been charged in effect against the basing-point system.

Senator BARKLEY. That is why I asked it in that connection. It seems to me it is an evil practice that ought to be stopped.

Mr. RICHBERG. I have heard this statement made in several instances where it involved business operations and the choice is really whether the industry is in the business of selling transportation or goods. If they are selling transportation, they are making a profit out of it, if they get a cheaper form of transportation. It has been a method of meeting a business situation which has in it certain advantages for the business man. How far this advantage goes to the consumer, I think it is rather difficult to say.

Senator BARKLEY. In other words, Jones is paying the freight but the railroad is not getting it?

Mr. RICHBERG. That is right.

Senator KING. If you had a plant for the manufacture of automobiles on the Potomac River here in Washington and you wanted to sell and did sell your cars, a number of them, down at the mouth of the Potomac, and sent them down on a boat or a barge where the freight was very small, you would charge the entire freight as that was fixed by the railroad, wouldn't you?

Mr. RICHBERG. I understand that is the way that is made.

Senator KING. By the way, isn't it a fact that coming back to the action of the Federal Trade Commission, that it prosecuted a case in the courts, and in 1924 a decision was rendered by the courts enjoining the Pittsburgh plus?

Mr. RICHBERG. That is correct.

Senator KING. And since the N. R. A. has been operating, they ignored that decision?

Mr. RICHBERG. Oh, no, Senator. That is just exactly what is not so. The decision was made in 1924, the decision was operative from then on against Pittsburgh plus, the multiple basing-point system immediately developed in 1924, had been in operation 10 years before the N. R. A., has never been the subject of action by the Federal Trade Commission in all of these 10 years, and it was precisely the system which was written into the code.

Senator KING. Isn't it a fact that the decision of 1924 practically governs what you call multiple basing points as well as the Pittsburgh?

Mr. RICHBERG. Very frankly, Senator——

Senator KING (interposing). The spirit and the letter of the decision.

Mr. RICHBERG. It does not govern it; no. Because it could not. In other words, your multiple basing-point system, as I was pointing out, carried out to the point of having a basing point at every plant, would be perfectly within the law, and certainly would not be prohibited by the Pittsburgh-plus. The Pittsburgh-plus specifically provided a prohibition against that type of basing point which was there put in operation. It is perfectly true that you can carry the logic of that out into the present multiple basing point system and say that under the same logic that this system should be held illegal, but you cannot say as a mathematical matter because of the Pittsburgh-plus decision, that this multiple basing point system is illegal. The answer is that the attorneys for the steel corporations, who have spent more or less their lives on the question have insisted on advising their clients for 10 years that they could go ahead with this system with perfect legality.

I do not accept their system, I am not endorsing it, but I am simply stating that there is a legal issue on which these men have been perfectly willing to advise their clients, and the system has been openly carried on for 10 years. It is absolutely open; there is nothing concealed or secret about it.

Senator KING. Under the basing system as it is applied by the N. R. A. and by the steel companies, a person who was manufacturing steel parts at Duluth, we will say, would be compelled, that not being a basing point, to charge his neighbor who bought some of his parts, the same price, including the freight from the next basing point, which might be Chicago or might be Cleveland, Ohio.

Mr. RICHBERG. He would be required to charge what he quoted at the nearest basing point, that is correct.

Senator KING. It might be a hundred miles or five hundred miles away?

Mr. RICHBERG. That is perfectly correct. That is one of the artificialities. What we have been endeavoring to do under a code, and this has been done, and I can give you a list of the increase, we said that wherever we found an artificial situation and an economic injustice by virtue of the lack of a basing point, we have insisted that a basing point should be added. A great many basing points have been added during the amendments of the code accordingly, improving the operation of the code.

Against that, the code also provides for the allowance of the transportation charges to permit, for example, the elimination of these

artificial transportation charges in many instances, and we have been insisting that where there was an unfair transportation charge, that complaints should be made, for an allowance in the transportation charge in many instances. For example, the automobile industry, a large consumer of steel, insisted upon having allowances made in transportation charges to Detroit, and in the interest of a competitive situation, to bring the plants at distance from Detroit into competition with the plants nearer, those allowances are made.

Senator GEORGE. Mr. Richberg, may I ask you this question? It is somewhat afield from the present subject. In fixing differentials between various sections of the country, has the N. R. A. taken into account the marketing cost of the finished product?

Mr. RICHBERG. The marketing cost?

Senator GEORGE. Yes; the cost of marketing. Has that been an element at all?

Mr. RICHBERG. Let me make clear that the only place where the N. R. A. has had anything to do with fixing a differential affecting price would be in a cost accounting to protect against the destructive price cutting. We have not established prices, as far as the N. R. A. is concerned, for which products should be sold.

Senator GEORGE. In fixing wages.

Mr. RICHBERG. Differentials have been raised as to different conditions in different parts of the country. There is a very common misunderstanding. There is almost no price fixing, either authorized or carried on under the N. R. A. codes. There is price fixing by private illegal agreements, which may be going on in various industries with which we have nothing to do and do not protect in the slightest degree, but outside of lumber, oil, and coal, there are practically——

Mr. HENDERSON. There were several emergencies, and in one of those in the cast-iron soil pipe, we did take into account the marketing cost for a 3-month period.

Mr. RICHBERG. That enters into another exception. We have not had a price-fixing arrangement except in these three codes, lumber, coal, and oil, in which there has been an effort to regulate prices of a natural resource because of the complete disorganization of the conditions in those industries. That has been abandoned in lumber, leaving only coal, which is regulated only by voluntary associations engaged in the sharpest form of competition in the market. But they do not regulate the price there. The Supreme Court of the United States has held, in that particular instance, that that is not price regulation, because they are in a competitive market.

That leaves practically only the oil situation, in which so far as I know up to date there is still nothing in the nature of price regulations, being largely the effort of the oil administration to control through production control.

The activities of the N. R. A. in relation to prices has been only in endeavoring to stop destructive price cutting, and when an emergency was declared and found necessary for the protection of the wage conditions and the market conditions in a particular industry for a short time.

Mr. Henderson has called my attention to the fact that in the cast-iron soil pipe, in the face of an emergency, certain base prices were fixed. Am I correct about that, Mr. Henderson? Merely for an emergency.

Mr. HENDERSON. Yes.

Mr. RICHBERG. And those prices were to take into consideration those various differentials. But it was only for an emergency. And for an emergency until it was passed, and after the emergency passed, although the industry thought the price control should be retained, it was abandoned by the N. R. A., and, as a matter of fact, the helpful effect of the potential power and what had been done has since that time preserved a decent price level in that industry.

That in substance is the extreme of the attitude of the N. R. A. on the subject of price control; that is, that where you have an emergency situation in which you find that destructive price cutting is undermining the market and breaking down the wage standards, it is going to cause loss to the entire industry, that N. R. A. as an emergency proposition will authorize the maintenance of certain minimum prices.

Senator KING. This is substantially correct, is it not? I read now from Price and Price Provisions of Codes in your own organization.

Mr. RICHBERG. I trust it is correct, then, Senator.

Senator KING. Well, there may be some doubt. I read as follows:

One hundred and eighty-seven codes have some provision for establishing minimum prices in cases of emergency and it is again in the food codes that the largest proportion are found, 44 percent. However, there is no marked concentration into any particular class in this division. The Manufacturing and the Equipment Divisions also have a relatively large proportion of such provisions, 43 and 39 percent respectively. The most marked concentration in the manufacturing group is in the fabricated materials subgroup in which 10 out of the 15 codes have some such provision; in the small hardware subgroup, where 10 out of the 13 have such a provision, and in the metal treating subgroup, with 4 out of the 5. In the Equipment Division the concentration is most noticeable in the plant machinery subdivision, with 6 out of 9, and in the construction subdivision (in the fabricating subgroup) with 10 out of 18.

Over 64 percent of the provisions relating to the establishment of minimum prices in case of emergency only are either exactly as set forth in office memorandum of February 3, 1934, or closely patterned after it. According to this memorandum, the code authority, subject to N. R. A. approval, determines when an emergency exists—

that places it in the code authority, and the code authority in most instances consists of those interested in the industry, and they then become the determinator of when an emergency exists——

Mr. RICHBERG (interrupting). They have no control over that. They have no control over the determination of an emergency.

Senator KING. Who does?

Mr. RICHBERG. The N. R. A. alone.

Senator KING. Then the N. R. A. means some person in your office?

Mr. RICHBERG. It means the Administrator or the Board.

Senator KING. Or somebody——

Mr. RICHBERG (interrupting). No; that is a function of the Board itself.

Senator KING. How many administrators have you?

Mr. RICHBERG. There are 7 members of the Board, 5 voting and 2 nonvoting members.

Senator KING. Let me go further.

According to this memorandum, the code authority, subject to N. R. A. approval, determines when an emergency exists and establishes a minimum price based on lowest reasonable cost.

Of course, they determine what is the lowest reasonable cost, I suppose?

Mr. RICHBERG. No, sir; they have no authority in that regard.

Senator KING. Somebody determines that.

Mr. RICHBERG. We do.

Senator KING. I will continue:

In the case of the equipment group, where the greatest number of provisions occur, the percentage is higher, 79 percent. The remainder correspond to office memorandum 228, with only few and minor variations, such as that N. R. A. should declare the emergency and establish the minimum price.

In order that the record should show, what is office memorandum 228?

Mr. RICHBERG. That is the general statement of price policy providing for the declaration of emergencies and the condition under which they may be declared.

Senator KING. Will you furnish me a copy of that?

Mr. RICHBERG. Certainly. May I suggest, Senator, if you desire, we could have it incorporated in the record at this particular place.

The CHAIRMAN. Very well, do that.

(The document above referred to is as follows:)

OFFICE MEMORANDUM No. 228. JUNE 7, 1934

OPEN PRICE FILING, COSTS, PRICE CUTTING, AND ACCOUNTING PROVISIONS IN CODES

The following is the policy of N. R. A. on the above matters:

(1) *Open price filing.*—Prices, discounts, rebates, allowances, and terms and conditions of sale, shall be filed with a confidential disinterested agent of the code authority if any, and if none, with an agency to be designated by N. R. A. Immediately upon receipt such data shall be noticed to all such members of the industry and their customers as shall apply therefor and defray the cost thereof. No higher price shall be filed within 48 hours. No member of the industry shall sell or offer to sell except at filed terms and conditions; nor shall be entered into any combination or conspiracy to fix price or intimidate others either by himself or in any such combination or conspiracy.

(NOTE.—See exhibit A for further guidance.)

(2) *Costs and price cutting.*—(*a*) Any member of such code or of any other code or the customers of either may at any time complain to the code authority that any such filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise, or tending toward monopoly or the impairment of code wages and working conditions. Such code authority shall within 5 days afford an opportunity to the member filing the price to answer such complaint and shall within 14 days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of N. R. A. which shall render a report and recommendation thereon to the Administrator.

(*b*) In an emergency, declared by the administrator, after proper showing of cause, and for such time as the administrator may determine, stated minimum prices may be approved by the administrator.

(NOTE.—See exhibit B for further guidance.)

(3) *Accounting provisions.*—Codes should contain clauses recommending principles of cost finding appropriate to the industry and approved by the administrator, but no such methods shall be obligatory and none shall suggest uniform additions to total sales cost in the form of percentages or differentials designed to bring about arbitrary uniformity in costs or prices.

(NOTE.—See exhibit C for further guidance.)

(4) *Adjustment of codes.*—Pending codes and codes hereafter submitted shall be adjusted to these policies. Divisional administrators shall seek through agreements with code authorities of approved codes to amend them to conform with these policies and, wherever resistance is encountered, the subject shall be taken up with the administrator.

By direction of the administrator.

G. A. LYNCH, *Administrative Officer.*

EXHIBIT A. OPEN-PRICE FILING

1. N. R. A. policy favors properly drawn open-price provisions in codes where desired by the industry. The attached draft article reflects approved policy and should be substantially followed.

2. The objective is to achieve fair competition, based on knowledge of competitive factors to the fullest extent possible without unduly curtailing private initiative or destroying incentives to any individual legitimately to extend his business.

3. Where industries believe that some waiting period is essential in order to accomplish the objectives outlined, the matter will be treated on its merits as in the case of any proposed departure from announced policy.

ARTICLE —. OPEN PRICE

SECTION 1. Each member of the trade/industry shall file with a confidential and disinterested agent of the code authority or, if none, then with such an agent designated by the Administrator, identified lists of all of his prices, discounts, rebated, allowances and all other terms or conditions of sale, hereinafter in this article referred to as "price terms", which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the industry as are sold or offered for sale by said member and for such nonstandard products of said member as shall be designated by the code authority. Said price terms shall in the first instance be filed within — days after the date of approval of this provision. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and revisions, together with the effective time thereof, shall upon receipt be immediately and simultaneously distributed to all members of the industry and to all of their customers who have applied therefor and have offered to defray the cost actually incurred by the code authority in the preparation and distribution thereof and be available for inspection by any of their customers at the office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all members of the industry and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid — day period after the approval of this code. The code authority shall maintain a permanent file of all price terms filed as herein provided, and shall not destroy any part of such records except upon written consent of the Administrator. Upon request the code authority shall furnish to the Administrator or any duly designated agent of the Administrator copies of any such lists or revisions of price terms.

SEC. 2. When any member of the trade/industry has filed any revision, such member shall not file a higher price within forty-eight (48) hours.

SEC. 3. No member of the trade/industry shall sell or offer to sell any products/services of the trade/industry, for which price terms have been filed pursuant to the provisions of the this article, except in accordance with such price terms.

SEC. 4. No member of the industry shall enter into any agreement, understanding, combination, or conspiracy to fix or maintain price terms, nor cause or attempt to cause any member of the industry to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this article to create.

EXHIBIT B. COSTS AND PRICE CUTTING

The attached draft article reflects approved policy and should be substantially followed and administered in accordance with the following:

1. When there is no emergency it is N. R. A. policy to avoid price fixing but also to prevent destructive price cutting in accordance with section 1 of the annexed article.

2. The following conditions may be deemed to require investigation to determine whether an emergency exists: (*a*) Impairment of employment or wage scales; (*b*) particularly high mortality of enterprises, especially small enterprises; or (*c*) panic in an industry or other special conditions thought by the Administrator to require stabilization by means of minimum price. When the Administrator believes that the declaration of an emergency might be advisable, the matter will be referred to the Research and Planning Division, notice of such fact being sent to the Advisory Council.

3. The Research and Planning Division shall examine all available evidence and analyze the probable effects of various possible minimum prices on total national production, general employment and general recovery, production and consumption of the product of the industry in question, other phases of national life, and the interests of the industry in question to the extent compatible with the foregoing and shall render a written report of its findings and recommendations to the Administrator and furnish copies of said report to the Advisory Council.

4. If on the basis of this report the Administrator determines that an emergency should be declared, he will make such declaration and establish the minimum price effective under the circumstances. The declaration of an emergency will be accompanied by a statement of the facts upon which the declaration is based and an explanation of the plan which is being applied.

5. Emergencies will be declared only for particular products and for a stated period, not longer than 90 days, subject to earlier termination or to extension, upon decision of the Administrator.

6. Remedial provisions will be put into effect subject to a plan of supervision, which it shall be the duty of the Research and Planning Division to devise, which will include the requirement of such financial, operating, employment, and other reports as shall be necessary to indicate the effect of the provision.

ARTICLE —. COSTS AND PRICE CUTTING

SECTION 1. The standards of fair competition for the industry with reference to pricing practices are declared to be as follows:

(a) Willfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the industry or of any other industry or the customers of either may at any time complain to the code authority that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly of the impairment of code wages and working conditions. The code authority shall within 5 days afford an opportunity to the member filing the price to answer such complaint and shall within 14 days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of the N. R. A. which shall render a report and recommendation thereon to the Administrator.

(b) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices. It is intended that sound cost estimating methods should be used and that consideration should be given to costs in the determination of pricing policies.

(c) When an emergency exists as to any given product, sale below the stated minimum price of such product, in violation of section 2 hereof, is forbidden.

SEC. 2. *Emergency provisions.*—(*a*) If the Administrator, after investigation shall at any time find both (1) that an emergency has arisen within the industry adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the act; and (2) that the determination of the stated minimum price for a specified product within the industry for a limited period is necessary to mitigate the conditions constituting such emergency and to effectuate the purposes of the act; the code authority may cause an impartial agency to investigate costs and to recommend to the Administrator a determination of the stated minimum price of the product affected by the emergency and thereupon the Administrator may proceed to determine such stated minimum price.

(*b*) When the Administrator shall have determined such stated minimum price for a specified product for a stated period, which price shall be reasonably calculated to mitigate the conditions of such emergency and to effectuate the purposes of the National Industrial Recovery Act, he shall publish such price. Thereafter, during such stated period, no member of the industry shall sell such specified products at a net realized price below said stated minimum price and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration or the Administrator may cause any determinations hereunder to be reviewed or reconsidered and appropriate action taken.

EXHIBIT C. COST FINDING AND ACCOUNTING

N. R. A. will encourage proper cost finding and accounting provisions in codes. When such provisions are incorporated they should substantially conform to the following:

SEC. —. *Cost finding.*—The code authority shall cause to be formulated methods of cost finding and accounting capable of use by all members of the industry, and shall submit such methods to the Administrator for review. If approved by the Administrator, full information concerning such methods shall be made available to all members of the industry. Thereafter, each member of the industry shall utilize such methods to the extent found practicable. Nothing herein contained shall be construed to permit the Code Authority, any agent thereof, or any member of the industry to suggest uniform additions, percentages or differentials or other uniform items of cost which are designed to bring about arbitrary uniformity of costs or prices.

Senator KING. Reading again from the following page of the publication, "Prices and Price Provisions in Codes":

Four hundred and three, or 59 percent, of the 677 codes, have a provision prohibiting sales below cost. In 78 percent of these, or in 315 codes, this is the only provision of any kind in the code relating to minimum prices, but in 66 other codes it appears in conjunction with an emergency price provision. With the exception of the public-utilities group and the finance, graphic arts, and amusements group, the relative number of codes in each group which have a no-selling-below-cost provision is remarkably uniform, running from 52 percent to 65 percent. Of these 403 codes, 352 nondistribution codes have a prohibition of selling below individual cost. Included in this number are 14 which also prohibit sales below a minimum cost set-up for the industry and 16 additional prohibit sales below a minimum price established for the whole industry. Most commonly in connection with a minimum price for the entire industry the specification is made that such minimum cost must be "reasonable." In most of the nondistribution codes, or 82 percent, no elements of individual cost are specified. Of the 87 cases in which they are, 54 codes specify "production and other costs." Thirty-six distribution codes are also included in the above 403, and in these the cost is defined most commonly as invoice plus transportation.

Those provisions, which are found in this booklet, "Prices and Price Provisions in Codes", put out by your organization, substantially represents the relation of the code to those industries?

Mr. RICHBERG. That represents a description of the codes, Senator, but the fact is that of a cost-acocunting system necessary there, out of 466 codes, only 35 such systems have been approved by N. R. A., and in this emergency situation, there have been only 10 emergencies declared by the N. R. A. in this price field.

Senator KING. This also appears:

A large number of codes commence sweeping exemptions from all minimum-price provisions, chiefly to meet competition.

There have been a number of those exemptions, have there not, and usually made at the request of certain code authorities? You use the words "codes authorities" as those enforcing the codes.

Mr. RICHBERG. Exemptions from minimum prices?

Senator KING. Yes.

Mr. RICHBERG. That would throw the door open entirely to any kind of competition.

Senator KING. What is meant by this expression, then: "A large number of the codes permit sweeping exemptions from all the minimum-price provisions."?

And I ask you, have not exemptions been made to the advantage of certain industries and to the disadvantage, perhaps, of others, or in other words, you made fish of one and fowl of the other?

Mr. RICHBERG. No; I cannot say that at all. As a matter of fact, exemptions have been made to permit increased competition where

there was a claim that there was something unfair in the application of a minimum-price base to a particular person, but those provisions have always provided, as I understand, for meeting a competitive price. Am I not correct, Mr. Smith?

Senator KING. That is the allegation, to meet the competition.

Mr. RICHBERG. Yes.

Senator KING. I read the words, "chiefly to meet competition."

Mr. RICHBERG. Yes.

Senator KING. (Reading further:)

A large number of codes permit sweeping exemptions from all minimum-price provisions, chiefly to meet competition. Two hundred and sixty-seven codes, or 48 percent of the total having some minimum-price provision, permit exceptions to meet competition of other members, although 111 of these 267 provide that only the prices of competitors not selling below cost may be met. Seventy-eight permit meeting the prices established by any competitor and a like number permit meeting prices of lower-cost competitors. Some codes, 65 in all, also permit selling below cost to meet competition of certain specified and definitely competitive products and/or of equivalent but nonindustry products. About one-half of these latter exceptions, 31, are in addition to the aforementioned provisions permitting sales below costs to meet competition.

Senator CONNALLY. Senator, would it interrupt you if I asked both you and Mr. Richberg a question?

Senator KING. Proceed, please.

Senator CONNALLY. Isn't it true, Mr. Richberg, that sometimes it is very necessary that they be allowed to sell below cost?

Mr. RICHBERG. Absolutely so.

Senator CONNALLY. Suppose thay have accumulated stocks that they cannot get rid of in any other way? They have to move them, and if they had to sell them at cost or above cost they would be unable to move them.

Mr. RICHBERG. There has been no effort in any way to prevent the selling of distressed merchandise, which is inevitable in instance after instance. That is another situation which developed, in which a new competition will arise from some source or other which is not covered. Necessarily, you must permit the person to meet that competition. That is the practically constant rule of all of these regulations.

Senator KING. Is not the contention of many persons who have been subjected to the codes that, with these multitudes of exceptions and exemptions and provisions to which I have invited attention, there is such a confusion that it is impossible to conduct business in a proper way?

Mr. RICHBERG. Those who do not like being held to decent rules of business do make that objection.

Senator KING. And do not many others?

Mr. RICHBERG. Now and then the rules themselves operate in such a way that there is a very legitimate complaint, and that is simply a matter of being taken care of administratively. As a matter of fact, 90 percent of the complaints come from two types—the business chiselers who have been destroying business in this country for years uncontrolled, and the sweatshop operators who have been breaking down wage standards—and if you would permit the N. R. A. to analyze the bulk of any group of complaints handed in to any Senator or any Member of Congress, we can show you without any question that that is the way the percentage runs, because when I took the

complaints from one of the Senators who had a very large bulk of such complaints, that is just the way we found they ran.

Of course, that sort of thing you will find anywhere when you try to install a system of decent conduct, but the only way to protect the decent honest man is by the very thing you have read, Senator, and that is by providing means for the administrative exceptions and exemptions, so that a rigid rule will not do an unintentional injustice.

Senator BARKLEY. Are not such exceptions necessary in order that a merchant may put on a seasonal sale or a retailer may get rid of out-of-date goods, such as clothing and shoes, and so forth?

Mr. RICHBERG. Let me show you what would happen if you wrote, into the rule, the exception. Say that it said, "seasonal sale." Then there would be a constant question of interpretation. That is just the reason why administrative interpretation by those who are familiar with the business, advising the Recovery Administration, makes it possible to apply a rule in a flexible way so that it is fair and just, and any other form of rigid rule-making without the administrative interpretation would either be so loose that nothing would be accomplished or else so tight that you would strangle business.

Senator BARKLEY. Have you explained in your testimony so far—I was not here at the beginning—the exact status of the code authorities; how they are selected and what their responsibility is.

Mr. RICHBERG. I tried to one day.

Senator BARKLEY. I do not want you to repeat it.

Mr. RICHBERG. I do not mean that I got anywhere, because I never finished that statement, but it is one statement I started to make.

Senator BARKLEY. There is confusion in the public mind, and in the official mind too, I should say, as to just where these code authorities stand—whether they are selected by the industries they represent or whether they are Government employees or whether they are paid for by the public or by the industries.

Mr. RICHBERG. I could say in a very few words, Senator, that the code authority as such is normally a group selected from the industry or trade by a method of selection approved by the Recovery Administration, as being fair, to give an adequate representation to all of the interests involved. That code authority then has no control over discretionary Government power. It does not have the right to exercise any Government authority.

Where there are special provisions made, such as for the declaration of an emergency or in the effort to prevent a destructive price war, the absolute control of an administration of public officials, the N. R. A. administration is required in every instance, either in the form of a veto or an approval, sometimes one form and sometimes the other.

Also, on all of the code authorities are representatives of the N. R. A. officials paid by the Government, whose business it is to inform themselves of what is going on, to receive any complaints, to see whether the code authority itself is performing its function.

I have tried to point out heretofore that the functions of the code authority are at least 90 percent beyond any criticism, on the ground that they are passing on their own case. They are merely the effort to see that the trade and industry and the members thereof comply wtih obvious provisions for the benefit of the entire industry, and to check up on complaints regarding them.

Senator BARKLEY. Do these ex-officio members of the code authority representing the N. R. A., have votes?

Mr. RICHBERG. In most instances the members representing the N. R. A. have not votes, for the specific reason that it was felt that the administration itself should not be put in the position of a minority, having a minority vote on a code authority composed of private individuals, but if it were necessary to have Government authority exerted, it should repose absolutely in the N. R. A. administration and not subject to any veto by private vote. In other words, the code authority is not intended to exercise a public authority or discretion. It simply polices the law which has been written.

Senator BARKLEY. If there is a review by the N. R. A. board or an administrator, of any action that has been taken by a code authority, the N. R. A. representative in the code authority does not participate in the review or in the appeal; in other words, he would not be voting on his own action.

Mr. RICHBERG. Not at all; he would have nothing to do with it. I may give you an example in one code authority in which I served as administration representative, and there were questions of the violation of the hours provisions under the law, of working men over hours. As a matter of fact, those manufacturers who were charged with the practice were brought in before the code authority, they were required to explain the situation under which they had taken this action. The question was ironed out as to whether there was actually a violation or not.

As far as that trade association itself by voluntary agreement could impose a penalty on their own members, it rested solely in the contract of their members, and not in the Government. There was no public authority behind it. The members themselves had agreed upon penalties for violation of their own provisions. So far as they enforced them, that was their own matter, and it was entirely a voluntary matter, and I sat merely as an observer in the situation. But if there had been a complaint from the outside that the code was not being enforced, the code authority would have nothing whatsoever to do with that matter, that would have been taken up by the N. R. A. Compliance Division as a direct complaint against the individual complained of, and who, as I pointed out, in these one hundred and some odd thousand complaints has been required to make restitution for wages withheld and other wrongs done. That is the exercise of public authority.

Senator BARKLEY. The various administrators and deputy administrators, as I understand it, are public officers?

Mr. RICHBERG. They are.

Senator BARKLEY. Paid for by the Government?

Mr. RICHBERG. Sworn in and paid for by the Government.

Senator BARKLEY. They are not supposed to represent any industry or any interest?

Mr. RICHBERG. They are not permitted to.

Senator BARKLEY. Although drawn from various industries, as I understand.

Mr. RICHBERG. Many of them. Many of them necessarily drawn. As a matter of fact, some of our most effective representatives and deputies have been men who in years past were very well acquainted with the trade or the particular industry, have gone out of it, and lost

their immediate connections in that industry. They are very effective men, because they need to know those things.

But I want to emphasize the point that I sought to make in connection with code-authority operation. All of the code-authority operation that can be wholly voluntary has been left voluntary. That is so far as the trade association can agree among themselves upon self-discipline and penalties and imposing discipline, that is what we term the self-government of industry. We are encouraging them to do that work, but that is not the exercise of any public power. That rests upon their own contract and agreement.

If any public authority is being exercised, it is only exercised by a public official. If the code authorities pay their officials salaries that they see fit to pay them, that does not become the business of the N. R. A., unless we are required in some way to enforce that payment. If we are required in any way to bring even pressure to bear on the enforcement of that payment, the insistence is then made that the N. R. A. shall pass on the budgets.

As I said, that recently has been extended so that the N. R. A. has required all of these authorities to submit their budgets, whether they were voluntary or not, in order that the contention might not be made that under cover apparently of public authority, improper budgeting was being forced upon the trade or industry.

Senator BARKLEY. Have you any series of pamphlets or rules and regulations printed which have been issued by the N. R. A. setting up the method by which these code authorities are selected by the various industries, which you could put into the record?

Mr. RICHBERG. I think we can get that particular type of pamphlet. We will see that it is done.

The CHAIRMAN. Put it in in this connection with your testimony.

Mr. RICHBERG. I think it would be very desirable.

Senator BLACK. Mr. Richberg, I want to ask you a question or two if Senator Barkley is through, about Pittsburgh-plus. We are very vitally interested.

Mr. RICHBERG. I know that.

Senator BLACK. Is there any hope that we can get that discontinued through the code?

Mr. RICHBERG. You are referring to the basing-point system at present in operation?

Senator BLACK. Yes; on steel.

The CHAIRMAN. Let me say to you, Senator Black, that just before you came in, Mr. Richberg went into that proposition very fully.

Senator BLACK. Yes; I want to find out how he feels about it personally.

Mr. RICHBERG. I will also say this, Senator, that there is just being multigraphed now for distribution, the report of the Federal Trade Commission and the report of the N. R. A. on that question, and they will be out on Friday, I think for Monday release. We were trying to get the two multigraphs for simultaneous release.

I stated in substance this position before you came in, and that was that the Federal Trade Commission took a position as to the invalidity of the entire system in general, and that N. R. A. took the position that the multiple basing-point system depended for its validity and its economic soundness upon the extent to which you have a multiplicity and an adequate number of basing points. That is stating it in a very rough way.

The complaint, as far as the Birmingham situation, if I understand, or the Alabama situation, is not related to the basing-point system as such, but as to the lack of basing points which would be beneficial to the interests of that particular section of the country.

I tried to point out that if you had a basing point at every mill, you would have nothing but an f. o. b. mill situation. If you have a basing point, which is the general recommendation that I have suggested, in every producing area, you have substantially the same effect. Personally, that is the situation that we are advocating.

Senator BLACK. The effect is, is it not, that as far as Birmingham is concerned, even if it can manufacture steel cheaper than it can be manufactured at other places by reason of natural advantages, that is, of coal and native ore, that it is compelled under that system to refrain from selling at a cost plus a reasonable profit, but must adopt the basic price fixed in Pittsburgh, by Pittsburgh rates or at some other point?

Mr. RICHBERG. They should all be fixed at Birmingham, because Birmingham is the producing center.

Senator BLACK. Yes; but, as a matter of fact, you know that under the code that is not the case, do you not?

Mr. RICHBERG. I cannot remember all the facts, but I thought that Birmingham was made a basing point for most of the products of Birmingham.

Senator BLACK. You did not know that under the code they had been making very serious complaint down there for about a year, on the ground that the people of that district do not have the privilege of getting the advantage of the natural rates at which they could sell their steel.

Mr. RICHBERG. But Senator, frankly, I think a good percentage of the criticism of the Birmingham price is a criticism of the Birmingham operators for not fixing lower prices. There is nothing in the code which prevents them from fixing lower prices for Birmingham steel.

Senator BLACK. Whatever it is, the code sustains them in that action, does it not?

Mr. RICHBERG. It does not. That is exactly the point which I tried to explain to my good friends in Birmingham, that they ought to make their complaint against the steel operators in Birmingham.

Senator BLACK. The Federal Trade Commission, however, has held such practices wholly illegal, hasn't it?

Mr. RICHBERG. The holding of the Federal Trade Commission, as far as I know, will practically not affect that situation at all.

Senator BLACK. It did not about 10 years ago when the suit came up?

Mr. RICHBERG. The Pittsburgh-plus decision, Senator, affected that and very beneficially. The Pittsburgh-plus rule was a discrimination against Birmingham because you had to fix a Pittsburgh-plus, but under the system where Birmingham itself is made a base point, the complaint must be, that it is not the base point of enough products or that the Birmingham operators are not fixing their prices at the levels they ought to. That is not a complaint against the code.

Senator BLACK. Why should not the people have the right to buy that steel which is produced in Birmingham at any rate at which they can sell it at a profit?

Mr. RICHBERG. They have that right.

Senator BLACK. Why should the operators have a right—if you say the complaint is against the operators—to fix a price by agreement among themselves as authorized by the code?

Mr. RICHBERG. They have no right, and the code does not authorize any agreement. As a matter of fact, the code distinctly provides against that.

Senator BLACK. I want to understand this: You are opposed individually, and as an official of the N. R. A., to any system which permits Birmingham to suffer, or any other section, by reason of an agreed price?

Mr. RICHBERG. Absolutely.

Senator BLACK. And if it is necessary to amend the codes, or to take such action as is authorized by law, then we can expect that the code authorities will take it to prevent such a practice.

Mr. RICHBERG. You can expect that the N. R. A. will give you every aid in that. There is no doubt about that.

Senator BLACK. That is what I want to find out.

Senator KING. One other question, Mr. Richberg. You mentioned yesterday the fact, as I understood you, that the N. R. A. did not use its authority to compel or to influence persons to pay these assessments which were levied by the code?

Mr. RICHBERG. No. If you got that idea from me, Senator, it was a misstatement, or a misinterpretation, because I did not want to say that the N. R. A. did not use its influence to get assessments paid.

Senator KING. As a matter of fact, you have sent out millions of letters under the franks of the Government to a large number of persons——

Mr. RICHBERG (interrupting). The code authorities have not been allowed to use Government frank at all.

Senator KING. Have they not been sent out under a frank, a large number of letters demanding assessments or making threats if they did not?

Mr. SMITH. No. There have been no letters of threat sent out by N. R. A.

Mr. RICHBERG. We have, as a matter of fact, called in code authorities, who have attempted to use threats, and severely disciplined them for that.

Senator KING. Isn't it a fact that even within the past 2 days, since this inquiry has been carried on, that there has been considerable concern down there with some of the persons in your office—and when I say your office I mean the N. R. A. organization—and that a large number of these letters which have not been sent out have been collected and suppressed?

Mr. RICHBERG. I cannot think there is any foundation for that at all, Senator, but if anybody has found in the last 2 days that they were undertaking something that they should not, I hope they have stopped it.

Senator KING. Isn't it a fact that there have been sent out from the N. R. A. offices, large numbers of these letters under the Government frank?

Mr. RICHBERG. I understand Mr. Smith's statement that they have not permitted the use of the Government frank to code authorities, and that the N. R. A. itself has not sought to compel the payment of assessments.

Mr. SMITH. I did not say that. I said that the N. R. A. has attempted to secure necessary code assessment payments, but there has been no threat, there have been no threats from N. R. A. unless by mistake of some subordinate.

Mr. RICHBERG. We will put it this way and get it exact. The N. R. A. has supported the payment of assessments under the codes and has encouraged and done its part to aid in having such assessments, when approved by N. R. A. collected; but that the N. R. A. has not indulged in threats in that regard.

Of course, in as large an institution as this, that does not mean that some individuals have not overstepped the bounds. They have not done it under authority.

Senator KING. Have these letters been sent out under Government frank?

Mr. RICHBERG. The N. R. A. mail is all under Government frank.

Senator KING. I mean these letters respecting delinquent assessments.

Mr. SMITH. Any such letters as we sent have been under Government frank.

Senator KING. Then, as a matter of fact, the N. R. A. has been used, and the Government frank has been used, for the purpose of collecting assessments.

Mr. RICHBERG. To put this perfectly clearly, Senator, I am not trying to dodge this question of whether N. R. A. has used its influence in the collection of assessments which had been authenticated by the N. R. A. as proper assessments.

May I say, as I stated the other day, the legal situation has been a difficult one from the beginning. There is authority in favor of the propriety of requiring a business to support its own necessary regulation, in the public interest. One of the very propositions which I presented in my opening statement was for Congress to decide specifically whether it would authorize such collection, and if the Congress decides to authorize it, we have that legal foundation, and if the Congress decides we should not do anything about the collection of assessments, then we would like to have the responsibility taken away from us.

We ought to know, in other words, if this is to be wholly voluntary from the standpoint of assessments, and we will follow that policy.

Senator KING. Haven't you sent out letters to persons who were not members of any organization but who were engaged in industry and who had refused to come under the code, insisting that the code had been superimposed upon them, and they would have to come in and pay assessments?

Mr. RICHBERG. There have been letters sent out, undoubtedly, to people, pointing out their obligations under the code and that they had not participated.

Senator KING. You concede, then, that the persons who were not under the code and who refused to come in, have received these letters from the Government?

Mr. RICHBERG. Under the law passed by the Congress of the United States, they were under the code.

Senator KING. Who did not come in voluntarily?

Mr. RICHBERG. Who did not come in voluntarily; yes.

Senator KING. They have received letters under the frank of the Government in regard to alleged delinquent assessments.

Mr. RICHBERG. As to that, I don't know, Senator——

Senator KING (interrupting). And threatened if they did not pay the assessment, the "blue eagle" would be taken away from them or they would be subjected to some penalties prescribed by the code?

Mr. RICHBERG. I cannot say that I know of any such letters.

Senator KING. Have you any of the copies, Mr. Smith? You seem to know. Copies of the letters that have been sent out during the past year or year and a half.

Mr. RICHBERG. May I suggest this, Senator——

Senator KING (interrupting). I would like Mr. Galvin to come and testify in regard to that matter.

Mr. RICHBERG. I would suggest if you want any individual, we will be very glad to bring him up or inquire. I don't know what you are referring to.

Senator KING. I will ask Mr. Smith to produce tomorrow a number of the copies of the letters that have been sent out during the past year.

Mr. SMITH. I cannot comply with any blanket request of that sort, without giving a truck load of letters.

Senator KING. I did not say a truck load. I said copies of each of the various forms that were sent out. I did not ask for truck loads.

Mr. RICHBERG. Frankly, I do not think we have form letters.

Senator KING. You have sent out letters under the frank of the Government?

Mr. SMITH. Millions of them.

Senator KING. Respecting assessments?

Mr. RICHBERG. I don't doubt that.

Senator KING. I would like a few of those forms.

Mr. SMITH. We will give you the forms.

Senator KING. I don't want any controversy about what I want.

Senator BARKLEY. There must be somebody down there who has charge of that, and that person would be the best person to produce them.

Mr. RICHBERG. The point that I am pointing out is that here we have six-hundred-and-odd codes. I don't know in relation to what codes this question may have arisen, and the codes are divided through the organization in such a way that there is no single person who would have charge of that matter. We can ask Mr. Brown—Mr. Smith says that Mr. Brown is the budget officer in charge of that general question of assessments, and so forth. We can ask him to look up the various types of correspondence that may have been used in connection with assessments and see if we can bring what you desire. It is only a question of volume, Senator. There is no difficulty about producing the files; it is just a question of where to find what is particularly desired, and if you give me a clue of any sort, I will be very glad to go directly on that clue.

Senator KING. The clue is the form of letters which have been sent out under the Government frank to alleged recalcitrant members of some industry.

Mr. RICHBERG. Could you indicate the industries or trades?

Senator KING. In regard to assessments.

Senator COSTIGAN. Will you permit an inquiry at this point, Senator?

Senator KING. Surely.

Senator COSTIGAN. Do you know, Mr. Richberg, whether any demand from the tobacco code authority was made on the wholesale grocers to pay assessments to the tobacco code authority to operate tobacco departments of the separate entities and to file reports of the amount of business done, and the stocks on hand, and other statistical data?

Mr. RICHBERG. That is a request from the tobacco code authority to the wholesale grocers, Senator?

Senator COSTIGAN. Yes.

Mr. RICHBERG. That is very likely to be involved in the code of——

Senator COSTIGAN (interrupting). Would copies of such requests be in your office?

Mr. RICHBERG. That is one of the overlapping situations that need treatment, the overlapping of the individual code and the wholesale code, where they tried to get the wholesaler who deals largely in a certain commodity to carry his share of the load.

Senator COSTIGAN. I thought it might be helpful to Senator King to have an instance.

Senator KING. I think Mr. Richberg knows what I am asking for.

Mr. RICHBERG. Frankly, I do not.

The CHAIRMAN. Confer with Mr. Brown.

Mr. RICHBERG. I will be delighted to find out.

The CHAIRMAN. And comply with Senator King's request.

Senator KING. So that there can be no misunderstanding, I want copies of letters which have been sent to persons who have submitted to the code, and persons who have not come under the code, in any industry, insisting or demanding or urging them to pay their alleged delinquent assessments, and also copies of those letters which in addition to the demand that they pay the assessment, threaten them or tell them of the penalties and difficulties that would result if they failed to do so.

Mr. RICHBERG. Very well. If I can find those I will certainly bring them in.

The CHAIRMAN. Senator McCarran is here. Senator, do you desire to ask any questions of Mr. Richberg?

Senator MCCARRAN. I do not want to break into his general discussion.

The CHAIRMAN. That is all right. There have been others breaking in before now. [Laughter.]

Senator MCCARRAN. I think there is one question that I wanted perhaps brought out by Mr. Richberg, that was touched upon by Senator Barkley just a few moments ago. One thing I wanted to clear up for my own enlightenment is, how are these various groups fixing up the code in the first instance selected?

Mr. RICHBERG. The so-called "code authority" or "trade association" which brings in the code.

Senator MCCARRAN. Perhaps you have gone over that ground and I can get it from the record.

Mr. RICHBERG. I can summarize it very briefly. The code is brought in by a trade association. If it is found not to represent a sufficient fraction of the trade in numbers and volume, what has usually happened is the formation of a special code committee consisting of the trade association and independent groups to all come

forward and sponsor the code. The code is then worked over by the administration—I do not know of any code that has ever been adopted in the form submitted—to conform so far as possible to our general requirements.

If it is then acceptable to the proposing committee and then receives the approval of the administration, it goes to the President for approval.

The code contains within it, usually, a provision providing for setting up a code authority or code committee which shall be representative of this entire body which submitted the code.

The administration laid down rules for determining how that body shall be made up or elected or selected, which is sometimes done by the code and sometimes by the administrator, in order to make it representative. That group then has no authority to exercise the public discretion, but they have authority to police their own industry under the terms of the code and obtain voluntary compliance.

If anything in the way of compulsion is required, then it is necessary to submit that matter to the Compliance Division of the N. R. A., which endeavors to get the provisions lived up to. If that fails, and there is any necessity of anything in the way of prosecution, it will then go either to the Federal Trade Commission or to the district attorney's office for prosecution in one form or another.

That is, in brief, the process by which the code is developed and enforced.

Senator McCarran. How are small units or small industries represented in the first instance in the formation of these codes? I am interseted in the small merchant.

Mr. Richberg. They are represented in this way, and that is that the substantial test which is given to a truly representative group is that it shall represent the volume of business done and the number of men engaged in the business. In the case of such an enormous group, for example, as retail-trade establishments, it is very difficult, of course to find the organization which is truly representative of a million merchants who have not organized themselves, but the trade association itself is required to hold itself open to membership on equal terms of all parties, and in the instance of those very large trades, the code authority and the trade association is substantially representative of the various elements all through the retail trade because they are very large associations and while they are not the majority, we will say in number, who may be members of the association, you can say fairly representative of those who are representative of the trade, so that as near as possible the requirement has been complied with that you deal with a group that represents the trade and speaks the trade's feeling.

In that connection, in instance after instance, where the operation of the code has been put in effect by such an association as in the retail trade, the response throughout the trade, the mass body of people who were not physically voting in associations, has been phenomenal in favor of support of the code, because of the protection which the code has given, for example, in the retail trade—to give one example—against this destructive price-cutting which is indulged in by chain-store groups and by large department stores using loss-leader tactics and other methods which have been breaking up and destroying the ability of the small local merchant to survive.

One instance we had recently of the cigarette code, where a price floor was laid as to the retail price on cigarettes. When the question was raised as to lifting that and opening the door again to selling below cost by the large groups, the chain stores and the big department stores, the volume of protests we received from the retail concerns throughout the country was something overwhelming. If this committee had received any such volume of protests, they would have thought that the N. R. A. was a bad institution. There was a demand that we maintain the protection from the vast group of small merchants who were being sustained against the unfair competition of these very large units. That has been repeated over and over again in the operation of these codes.

The CHAIRMAN. Mr. Richberg, have you any suggestion with reference to any change in the selection of these administrative code authorities?

Mr. RICHBERG. Yes; I made one suggestion, and to have it perfectly clear in my opening statement, and that was that no private body should be invested with any of the discretionary authority under the law. That is, that that should be written into the law prohibiting the exercise of any political discretionary powers by any of these code authorities, and let it stand out in red letters in the law so that such powers cannot be assumed and unfairly exercised.

The CHAIRMAN. If the N. R. A. authorities should determine that one section has made the code authorities topheavy and given an undue representation, have you in the authority of the N. R. A. the power to change that system and make it more representative, and the same rule applies to independents as well as to the big interests in the industry?

Mr. RICHBERG. Yes, sir; we have at the present time a discretionary authority to go into those matters and reorganize these code authorities, because they exist either by direct provision of the code or by the discretion of the N. R. A.

As a matter of fact, some code authorities that were acting badly were simply abolished and their authority taken away from them, and in that instance a code authority was set up by the N. R. A. to maintain operation of the code.

Senator, you have asked me several times on the question of reduction of the volume of this work of the N. R. A. codes, and I have a little statement of two or three paragraphs here which I would like to present succinctly for this purpose. It is not that I necessarily advocate the entirety of this method, but I want to show you what can be done in simplifying and reducing the volume of the N. R. A. operations.

I want to say that I do that not for the purpose of contracting the beneficial effects of N. R. A., but for the purpose of intensifying and concentrating the administration primarily upon those vast groups of employment and business where it can be the most effective and do the most good for the country and the least harm.

Along that line, as I stated the other day, I am not inciting this, but you will find that any suggestion for contracting the area of the operation of the N. R. A. will meet with very vigorous opposition from those groups of industry and labor that are left outside of that area, in many instances. I am not inciting this, but I am simply stating the possibilities, for the benefit of the committee.

If you withdraw from the compulsory provisions of the law all codes relating to what has been described as service trades, which I have previously discussed, you could still leave provision permitting the administration to furnish through approval of voluntary agreements, some protections regarding labor provisions and trade practices in the area of those service trades, supplemented—and this is exceedingly important—by the enactment of consistent State laws to permit regulation within the State of such trades. At the present time there are a large number of those State laws, and I have received since I have been on the stand various types of protest from different States objecting to the taking away from them of the support of the Federal Government in these State laws, which they regard as beneficent. In other words, the State laws are based on carrying into effect in the State the Federal code of fair competition and applying to it in the operations that they be regarded as wholly intrastate, and there is very strong support of that in a great many of the States where it has been productive of a great deal of good. In some of the States it has not been operated very well, and probably has been objected to more than the Federal law. If we set the standard here for control in the State which can be carried forward under State recovery laws, and, from administrative standpoint, if the administration is able to carry forward the task it has embarked on, which is a large task, it could be made mandatory in the law, to consolidate all of the small codes with the appropriate larger codes, and that would eliminate a great many of these annoyances and difficulties of overlapping and duplication which Senator Costigan recently referred to in the jurisdiction of particular codes. Then perhaps take something in the nature of a blanket small-industries code, which would have a minimum of provisions, which could be generally applied and rather flexibly applied, with a code authority from the administration, the effect of that can be indicated by this figure: If all codes covering less than 10,000 employees code were consolidated in this manner, 537 codes would be eliminated. That is outside of the service industries, which would leave an approximate of about 194 total codes. If you take away the major service codes, that would leave about 181.

I am presenting this to indicate to you the possibilities of a steady improvement and concentration of the N. R. A. effort and the elimination of these duplications and overlapping and minor troubles which have created difficulties with the N. R. A. and created a very heavy administrative burden in the N. R. A. and a program along the line I have suggested would not eliminate the operation of the N. R. A. from the great major industries with a huge employment involved and business involved, which are of great and vital importance to the entire country. It would save the protections that are extended in those major voluminous territories of trade and industry, and at the same time would reduce to a considerable extent the operation of the Federal administrative authority in so many of these minor fields.

In making that suggestion, I will say right now that you are going to have some of the most vigorous protests presented to this committee, by the mere suggestion that the separate nature and composition of these codes should be interfered with, because some of the strongest supports of the N. R. A. program come from minor industries that have been able to organize themselves effectively for the best protection they have ever had for the interests of all concerned

in the industry, and they will come to you and tell you with great vigor that they should be allowed to retain their self-governing codes, which have operated with practically 100-percent efficiency, and that you should not be misled because of the fact that out of 95 percent of American industry, 5 or 10 percent complain, mostly composed of chiselers and sweatshop operators—and there are others that are perfectly decent and square in their positions—but most of your objections will come from chiselers and sweatshop operators, people who have been the worst in American business. They can make out a lot of cases when they write letters and when they come in and file briefs, which some of them do extensively, but when you get right down to the bedrock of complaint, it is a complaint against not being allowed to indulge in unfair trade practices or the exploitation of labor and the deceit of the consumer.

Senator BARKLEY. What you suggest would not mean the elimination of any particular business necessarily from a code control, but if an enterprise were engaged in a business of five or six different kinds, each one of them under a separate code, then it would be possible to bring all of those under one code so that he would be operating all of his different businesses under a code that covered all of them. That might not be possible in all cases, but it would make it possible to have a single code authority exercising jurisdiction over an individual merchant, wholesale or retail, whose business was so split up that it had to come now under separate codes. Is that what you have in mind?

Mr. RICHBERG. That is one of the exact things we have in mind.

The CHAIRMAN. You have not the authority now in the law for further consolidation, as you have stated?

Mr. RICHBERG. To some extent we probably have the authority, but we have proceeded on the basis of the mandate given in the present law, which is that if a trade or association comes and wants a code for that trade or industry, they are entitled to it. We have not qualified that by saying, "You are entitled to join another code, but you cannot have a separate code." We have followed literally the mandate of the law. If that mandate is qualified, that will make it easier to carry it out.

The CHAIRMAN. Senator McCarran, have you any further questions?

Senator MCCARRAN. No.

The CHAIRMAN. Senator King?

Senator KING. I think Mr. Richberg wants to finish his statement.

The CHAIRMAN. Have you finished your statement?

Mr. RICHBERG. I have not finished the tabulation, but I can go on with that at any time.

The CHAIRMAN. I thought you mentioned that you had a statement.

Mr. RICHBERG. Yes; this little statement about the consolidation of the codes. I have finished that.

Senator GEORGE. Mr. Richberg, on the question of consolidation, it would be quite possible now to consolidate a great many of these codes on a basis of the minimum requirements, with the hope that it would work out fairly well with your smaller industries and local industries. Isn't that true?

Mr. RICHBERG. I think that would be very helpful from the standpoint of the N. R. A. administration, and I think it could be worked out with the industries in many instances.

Senator GEORGE. And particularly if the separate industries then were permitted to enter into voluntary agreements.

Mr. RICHBERG. Supplementing their codes?

Senator GEORGE. Supplementing the general code under which they operated.

Mr. RICHBERG. Yes.

Senator GEORGE. May I make this suggestion to you, I think in all fairness. It may be true that there are a great many chiselers among the small industries, and a great many sweat-shop operators among other small industries, but there are also a great many legitimate businesses——

Mr. RICHBERG (interrupting). I did not mean to indict everyone objecting to the codes.

Senator GEORGE. Is it not compatible with the very genious of our Government to protect the minority? I realize what we were trying to do in the set-up of the N. R. A., but it seems to me that no legislation can long exist in this country that does not really afford protection, actual protection, to the legitimate minority members of the group affected.

Mr. RICHBERG. I think we must, of course, necessarily, Senator, take into consideration the fact that there are present legitimate, minority interests in any business. Certain small groups have an interest contra to the majority, a legitimate interest, and a right to prosecute their interest. That is the reason, it seems to me, that if you can simplify the standards and get down to the fact that there are certain dishonest business practices, that everyone agrees are dishonest, and certain unfair labor conditions that everyone agrees are unfair, and eliminate a great deal of what is beyond, which is desirable, we will say, from the standpoint of majorities, but minorities may still object to, I think you will very clearly bring out whether a minority protest is a protest soundly based upon a legitimate minority interest, whether it is just a desire to act in a way contrary to the general welfare.

Senator GEORGE. Has not your experience really demonstrated that in the making of such a large number of codes and the great hurry with which the industries themselves got under these codes, that the minority rights have not always adequately been safeguarded? Haven't you found that difficulty?

Mr. RICHBERG. That is quite true. It has been impossible——

Senator GEORGE (interrupting). That is not a harsh or undue criticism of the N. R. A. administration; it is just simply one of those things which inevitably occurred, it seems to me.

Mr. RICHBERG. I think we must honestly say it would be inevitable in the doing of such a large job in a fairly short space of time.

Senator GEORGE. In such a short time. Isn't it possible, now that the N. R. A. may give more consideration to the actual bona fide views and rights of the minority?

Mr. RICHBERG. That is what we have been trying to do in the major parts of the last 6 or 9 months there. It has been to iron out these inequalities and unfairnesses that unintentionally have cropped into the codes where they have.

Senator GEORGE. I think I understand fairly well your view, and I have very great sympathy for it, but you very frankly have conceded throughout your examination and testimony that a different view prevails, maybe in the N. R. A. group, as to the desirability and perhaps the extent of the powers that may be exercised regarding all business.

Mr. RICHBERG. May I explain the situation there, Senator? When the present Board was organized, it was felt—I think I can fairly say it was felt by the administration—very desirable in this period of what might be regarded as improvement and consolidation of gains in the N. R. A., to have represented in the administration various points of view, not to attempt to set up a consistent opinion, but to have representatives there of what might be regarded as a very conservative point of view from the standpoint of how far the codes should go from a business angle, a point of view of labor as to how far they should protect labor, a point of view of the consumer as to how far the consumer was affected, and if you will examine the complexion of the present N. R. A. board you will find that it does not represent two persons of precisely the same attitude toward the solution of these questions, and the Board was deliberately selected along the line of having within it those various views for the purpose of having a fair analysis given to this problem of code improvement and code administration.

And so the Board has been operating since it was established at the end of September, as a melting pot of different ideas. Some of the members of the Board have ideas which in their extreme may go beyond those of others, both as to one and the other side of the picture, but I do not think there has been any question but what every member of the Board and practically all of the responsible representatives of trade or industry in the mass in this country, who have been passing through the N. R. A., have all been in agreement and complete accord with the absolute necessity and value of maintaining the fundamental principles under which the N. R. A. was established, and maintaining the unquestioned gains from the standpoint of the improvements of all trades and industrial conditions which have come through it.

Senator GEORGE. Mr. Richberg, I do not believe that that fact, and I very frankly concede that is a fact, I do not believe that that is so disturbing to business, but I do believe that business is apprehensive; I might even use a stronger term, but to say, at least, apprehensive, that there is in the administrative group the disposition to reach down into the States and into every local business and go far beyond the application of the fundamental on which the act was built, to the extent of changing the very method of doing business, the very system of doing business. That does not seem to me to be necessary to promote and establish the business of the country on the basis of the fundamentals involved in the N. R. A. Act.

Mr. RICHBERG. I do not think that is consistent with the fundamental theory of N. R. A., Senator.

Senator GEORGE. Do you not believe that that apprehension does exist on the part of a great deal of the business of the country?

Mr. RICHBERG. I think that apprehension exists to some extent in business, because of the pressures which have been brought to put in effect probable ultimately desirable policies, of which perhaps only a majority, a bare majority, up to the time are convinced of the good.

We are under this pressure from code authorities, for example. They see the situation in a particular trade or industry, which they think could be improved by a certain amendment to the code. They come in strongly urging that. Against that there will be a minority which is doubtful, as to whether they are ready to go that far. My own personal disposition has been that this should not be regarded as a matter for majority rule over minorities, but should be regarded as an effort to put into effect substantial accepted standards as to which only inconsequential minorities objected; the sort of thing upon which trade and industry as a whole could agree, because I believe that is what a law should be, and that is a representation of the accepted habits and customs of the people.

Senator KING. Isn't it a fact that you are seeking by your policies, uniformity—such uniformity as will produce and must necessarily result in stagnation?

Mr. RICHBERG. I think we are doing our very best to prevent that uniformity, Senator. There are those who believe in that type of governmental regulation and they have no control over the N. R. A., and they certainly have not been directing the policies of the N. R. A.; any who have that idea.

Senator KING. Do not the policies of the N. R. A. inevitably tend to do what might be denominated as restraint in trade and in monopoly, and before you answer that, may I make one suggestion? You will recall when the Sherman antitrust law and the Clayton acts were enacted, it was because much business had gotten into the hands of a few individuals, and they were creating monopolies, and they were calling their competitors, the small business man, chiselers—using your expression. They may have used the word "chiselers" then, but they said they were cutting prices, and therefore they wanted to crush them, and they did crush many of the small business men, and the crushing process was so terrific and so tragic that Congress was compelled to step in and enact those laws to which I have just referred. Does not your policy, contemplate such a uniformity as that competition will be strangled and ultimately will be destroyed?

Mr. RICHBERG. Senator, I want to call your attention to the fact that the very development under which monopoly grew in this country and that caused the passage of the antitrust laws was price cutting by large units that could afford the financial loss in order to drive the small man out of business, and the one thing we have been most criticized on in the N. R. A. as a practice and regulation in business has been the effort to preserve the minimum price level to prevent destructive price cutting, which is the chief weapon of the monopoly, so that the major activity of N. R. A. which has been subject to criticism has been the destruction of monopoly. That is a fact.

Senator KING. There may be much difference of opinion on that.

Mr. RICHBERG. I think it is still a fact, Senator.

Senator GEORGE. I meant to imply in my question that you can remove the apprehension of a considerable part of the business of the country and yet do no violence to the fundamentals on which the act was based.

Mr. RICHBERG. I agree with you. That was the basis of the statement as I sought to make it.

Senator GEORGE. I so interpret it. But I do think that that apprehension ought to be as far as possible removed, and removed by very clear enactment in the law itself.

Mr. RICHBERG. That is one of the great desirabilities of clarifying this law, Senator.

Senator BARKLEY. Looking back over the history of the N. R. A. from the beginning, in view of the novelty of it and the experimental character of it, is it your view at present that from the start it attempted to cover too much territory?

Mr. RICHBERG. I have said repeatedly, I think the greatest weakness of the N. R. A. was the effort to cover too much territory in a short space of time. The pressure to do that was that if we did not give all industry the same opportunity, we put one section of industry at an unfair competitive advantage over the other, that therefore the pressure was on us to do this all at once, but that pressure itself inevitably meant the job could not be done in the careful way it merited as a long-term proposition.

Senator BARKLEY. Basing whatever legislation we enact upon the experience of the past year and a half or 2 years, is it your view that whenever an industry is covered by the code, it ought to be fully covered so there would be no outer fringe of a given industry that was not within the scope of it, but that there are certain types of trade and probably of industry that need not be covered at all under the N. R. A.?

Mr. RICHBERG. I think you have got to cover an industry effectively, the industry, or else you had better not attempt to cover it at all. The complaint which was made at the time the N. R. A. was established, from industry after industry that had been trying to operate in a trade association, to clean up practices in the industry, was that as long as there was a group of 5 or 10 percent who could live outside of a decent rule of trade practices, they could absolutely destroy the efforts of the 90 or 95 percent to establish decent rules, and that is true, and that has been shown in the N. R. A. In other words, you simply must have coverage of an industry if you are going to protect the people who honestly comply. Senator Costigan, did you want to ask a question?

Senator COSTIGAN. Have the criticisms of your price cutting policy come mainly from large business or small business?

Mr. RICHBERG. Provisions endeavoring to protect prices?

Senator COSTIGAN. To prevent price cutting.

Mr. RICHBERG. The trouble of it is that it varies from industry to industry. In some instances they have come from the larger groups, such as the chain stores, or mail-order houses or department stores that could cut prices strongly in a certain leader line and make up their profits in another. In some instances, in some trades and industries, where a particular group of small manufacturers or producers were operating on a low price level by virtue of either skimping in quality or by overworking and underpaying labor, there has been complaint there.

Let me give the notorious example of the cleaning and dyeing industry. You could get suits cleaned and pressed at ridiculous prices, but as a matter of fact, the public did not know that what they got in the way of cleaning was a sprinkling of it with gasoline and hanging it in the sun and sending the suit back.

Senator CONNALLY. The fellow that got the suit back would know better how it was cleaned and pressed then somebody in the N. R. A., wouldn't he?

Mr. RICHBERG. He would know how it was pressed, but he would not know how it was cleaned. That is just what we found they were doing. We found the suits were sent back from the cheap establishments, smelling of gasoline and pressed, and not cleaned in the slightest degree.

Senator CONNALLY. If the man who owns the suit wants it done that way, hasn't he got that right?

Mr. RICHBERG. I think it is his business in this sense, if you tell him what is being done and you give him an adequate opportunity of knowing the sort of fraud that is put over on him.

Senator CONNALLY. I think that is a benevolent paternalism that is an invasion of his personal liberty. If he does not want his suit cleaned in a certain way, he should have it done as he wants it.

Senator BARKLEY. You should be sure he wants it sprinkled instead of cleaned.

Mr. RICHBERG. In the rubber-tire industry, for example, which affects everybody that owns an automobile, one of the trade provisions requires proper branding of tires. The average consumer cannot go and buy a tire and know, ordinarily, what kind of a tire he is buying unless he has some standard that he can rely on which is written on that tire. We have heard a lot about consumer protection, but as a matter of fact we have a good deal of it under the N. R. A.

Senator CONNALLY. That is a different thing. That is concealed. That is a technical matter.

Mr. RICHBERG. He cannot tell by the gasoline on his clothes, either.

Senator BARKLEY. In connection with cleaning, there has been a lot of publicity given to the arrest of some fellow in New Jersey for cleaning a suit of clothes or pressing it for 35 cents when he should have charged 40. Was that notorious case brought under the N. R. A. or the law of New Jersey?

Mr. RICHBERG. Senator Barkley, there were two interesting things about that case. In the first place, it was brought under the law of New Jersey and not under the N. R. A. It was brought under the New Jersey code. In the second place, when we announced the probable suspension of the cleaners and dyers code, one of the first telegrams we got was signed by this man saying, "I am the pants presser who was sent to jail. Please don't give up our code as it has done great good to our business." [Laughter.]

Senator CLARK. As far as the State law is concerned, it is a fact that the N. R. A. has actively solicited States to pass State statutes along that line.

Mr. RICHBERG. Precisely.

Senator CLARK. And New Jersey is one of the States that acceded to the solicitation?

Mr. RICHBERG. No. What New Jersey did was this: Instead of passing a purely cooperative law so as to maintain common standards of the codes, they passed a law providing for State codes. That is of course naturally within the jurisdiction of any State that wants to pass such a law, but the likelihood of the effect of it is that it would

create double confusion, where you enter the field where you already have a Federal code, and there is a State code with different provisions.

Senator GORE. Wasn't that case in the Federal court, that presser's case?

Mr. RICHBERG. No; that was in the State court of New Jersey.

Senator GORE. I want to ask a question along the line Senator Barkley asked a minute ago. There were in the neighborhood of 600 codes I think you said, the other day?

Mr. RICHBERG. Seven hundred.

Senator GORE. And I believe you stated, you said that it was an off-hand statement, that that number could probably be reduced to some 50 or 60.

Mr. RICHBERG. I had just made a statement a minute or two before you came in, in which I showed the possibilities of reducing this total number to about 181 codes.

Senator GORE. Can you break that 181 down to those that would be distinctively related to interstate commerce?

Mr. RICHBERG. I think all of those codes would be very definitely related to interstate commerce.

Senator GORE. And none would be distinctively a category that was intrastate commerce, but affected interstate commerce?

Mr. RICHBERG. That group would include none of the so-called "local service codes." It would include many codes, which under the definitions of some persons, are regarded as intrastate business but, for example, we cannot accept the theory that manufacturing and mining and the retail outlets do not determine and affect interstate commerce, because as a matter of fact, they can absolutely destroy interstate commerce.

Senator GORE. That might be, Mr. Richberg, and yet even admitting that they might destroy interstate commerce, could not they be so distinctively local as any effort to relate them to interstate commerce would be just the result of a wish that they were related rather than any facts which make up an integral part or essential part of interstate commerce?

Mr. RICHBERG. It is wholly a question of fact.

Senator GORE. If you set up as a standard the desirability and allege the necessity that a local business be controlled because it does affect interstate commerce, that does not exclude anything.

Mr. RICHBERG. It is only a question of degree, Senator, that is the whole question of the authority of the Federal Government.

Senator GORE. The other day you said that about five different codes, I believe, involved about 50 percent of the labor disputes.

Mr. RICHBERG. And trade practice disputes, yes.

Senator GORE. And that there were——

Mr. RICHBERG (interrupting). Labor disputes and trade practice disputes. They were a different five.

Senator GORE. That is what I was coming to. There was one 5 that involved 50 percent of the labor disputes, and another 5 that involved about 40 percent of the trade-practice disputes, if I remember.

Mr. RICHBERG. Something like that, Senator.

Senator GORE. I want to ask you this, that I wanted to ask, but I did not get to it. Were some of those five codes common to both categories?

Mr. RICHBERG. Yes.

Senator GORE. Name those.

Mr. RICHBERG. The trucking code was common to both categories; the baking code was common to both.

Senator GORE. I did not remember, but I thought there were some. The trucking code would undoubtedly be related to interstate commerce.

Mr. RICHBERG. Very closely.

Senator GORE. The baking code would not, necessarily.

Mr. RICHBERG. I am not familiar with all the details in that business. That is less closely allied, obviously.

Senator GORE. I was wondering if the trade practice troubles could be remanded to the Federal Trade Commission and eliminate them from this effort to administer codes otherwise.

Mr. RICHBERG. The difficulty with the trade practice provisions in the Federal Trade Commission, Senator, is wholly a matter of operation. The Federal Trade Commission operates in judicial legalistic manner of slow and interminable procedure on the basis of enormous records.

Senator GORE. It is a complicated piece of machinery.

Mr. RICHBERG. And it does not operate effectively to help and aid trade and industry. It does operate to deter improper practices and to eliminate by broad rulings, improper practices; but when it comes to the helpful, cooperative side, the Federal Trade Commission is very poorly devised for that purpose.

Senator GORE. Then you think that you need a more efficient set-up?

Mr. RICHBERG. A different type of administrative action.

Senator GORE. Of administrative machinery?

Mr. RICHBERG. Yes.

Senator GORE. To administer the trade practice and correct the unfair practices in connection with the codes?

Mr. RICHBERG. Exactly.

Senator GORE. Pardon me. The Senator is suggesting that the Federal Trade Commission did approve some codes.

Mr. RICHBERG. They recently approved trade practices in one industry, and then from time to time they have held trade-practice conferences in which they have given approval and sanction to certain trade practices.

Senator GORE. What I am trying to get at now is the essential trade practices and unfair trade practices ought to be committed to a special set-up of administrative machinery as distinguished from the Federal Trade Commission. That is one point I am driving at. The other, with respect to labor troubles, could they not be limited to minimum wages, maximum hours, minimum conditions, and standards or quality of output, without involving the question of efficiency as between competitive concerns?

Mr. RICHBERG. I think there is no question about that, and the suggestion that I made as to limited codes of fair competition practically covered that line, Senator, and no more. That is the compulsory group providing, however, for industry and opportunity to voluntarily adopt further standards if they could agree upon them.

Senator GORE. Don't you think the agreement on standards and quality, such agreements are essential if you are going to emancipate in a way the field of efficiency from control?

Mr. RICHBERG. I think it is very dangerous, Senator, to enter into the field of regulation over what should be standards or quality. You can enter into the field of representation of what quality or standard is so as to have proper branding and proper labeling and proper representation, but I think the determination of what is a sound quality or standard is rather a dangerous proposition to enter into from a governmental point of view.

Senator GORE. I was wondering if it was possible to outline a plan or a program under which the main objective was to eliminate obstructions and handicaps on the one hand so as to give them free competitive conditions, comparatively at least, and keep out of the field as far as we can, that affirmative regulation telling them they must do this and they must do that. I see a fundamental distinction between the two. I do not know that we can work it out in practice altogether or in administration.

Mr. RICHBERG. Here is the difficulty as an administration proposition, but I think generally what you laid down is a sound principle, and that is of negativing those things which are definitely harmful, leaving the promotion of improved conditions to voluntary operation, because we may not all agree upon what is for our benefit. We more often easily agree upon what is for our harm.

Senator GORE. Leaving business as free as possible. That is one of the main objections I have. I do not want to put all of these concerns together, the efficient, the more efficient, and the less efficient, and make them keep the same pace. I think that impedes progress.

Mr. RICHBERG. I think as a matter of fact you will find in the actual operation of the N. R. A. administration, there has been a very small amount of anything of the latter category. I think you will find that often in the operation of the trade association, which is confused with the N. R. A., they have gone ahead with rather ambitious plans which have not been necessarily a part of the code itself, but have been rather a part of the effort of the trade association being organized for the support of the code, to go forward into more ambitious fields. That is, we have had presented to us often, suggestions for the improvement or modification which has been difficult to accede to.

Senator GORE. That naturally raises another issue with reference to different groups within a trade organization, the stronger group seeking advantage of the weaker group. I take it there is a point where your administrative agency would have to intervene to see that justice is done.

Mr. RICHBERG. That is precisely what we have attempted to do in many instances, and that is a field of hot controversy when we do intervene.

Senator BARKLEY. Let me ask you a question there before we adjourn. There has come to me the expression of a fear among certain small units in certain industries, that somebody is seeking to bring about such a condition of economic competition as to recentralize the manufacture of certain products; for instance, in my city of Paducah, a city of about 35,000 people, there is a branch of the International Shoe Co., which has been there for 10 or 15 years and employs about a thousand people. Somebody has created a fear on the part of those people that under the N. R. A. an effort is being made by somebody to recentralize the manufacture of shoes so that

that plant would have to close and go back to St. Louis or to some other large industrial center. The same sort of fear is being created in the minds of some clothing factories, that somebody, in a mysterious sort of way, and they usually say it is the big manufacturer, is trying to compel the creation of such a competitive situation that this decentralization which has been going on for a number of years will come to an end, and that all these products are to be turned out in the large industrial centers. Is there any sympathy for any such effort on the part of the N. R. A., or is there any such plan contemplated?

Mr. RICHBERG. There is not any such plan, and as a matter of fact, it is not the business of the N. R. A., and I do not think it accepts it as its business, to aid in the working out of any ultimate scheme, as to whether business should be operated in large or small units, or centralized in certain locations, or decentralized; but it is perfectly true, Senator, that it is a thing which the N. R. A. administration has to be on guard constantly against, that in the operation of the codes, those who are thoroughly familiar with what might be known as the tricks in the trade, will endeavor through some innocent-appearing and apparently helpful regulation, as a matter of fact, to obtain some advantage for a particular group or section, and I think for that reason it is exceedingly desirable for the N. R. A. not to enter into those controversial fields of trade practices where there is a distinct opposition to something which apparently on its face may be a beneficent effort, but if there is a real strong opposition to it, we may be pretty sure that there is something behind the apparent good of the effort.

I think in the work and the rush of the N. R. A. and the difficulty of getting the codes across, many such opportunities may have developed in particular instances under codes, and it has been our effort in recent months where those were uncovered, to get the elimination of those opportunities.

Senator BARKLEY. Then it is a fair statement to say that so far as the N. R. A. is concerned, it does not countenance or sanction any devious method by which industries are to be driven out of any section or any locality in order that they may be driven somewhere else, from which they originally came, or to which they might ultimately go.

Mr. RICHBERG. Senator, I think that the N. R. A. did not receive any mandate from Congress, and I doubt if Congress would desire to give any mandate to plan how, in general, the business of the country should be operated.

Senator CLARK. But isn't it true, Mr. Richberg, that when one group, let us say—take for example what Senator Barkley used as an example, that the New England group of shoe manufacturers may control that shoe code authority and proceed to make some regulations that not only have a tendency of moving the shoe-manufacturing business back from Missouri to New England from which it was taken over a period of 35 or 40 years, and that when they make such a regulation they enforce it by the power of the N. R. A. In other words, it does not amount to anything unless they have the power of the N. R. A. back of it. Is that not true?

Mr. RICHBERG. In the first place, I do not know what such type of regulation should be, but I will say this, frankly, that they should not be permitted to make any such regulation, and they should not be given the sanction of the N. R. A.

Senator CLARK. But the point is that they can only function, one group or one section, or any competitive group can only function and enforce their ukases through the power of the N. R. A. itself; isn't that right?

Mr. RICHBERG. That may be true; but I have explained frequently that there has been no grant of authority to code authorities to go and make rules and regulations or change codes or enforce some provision that in their opinion seems to be a good provision.

Senator CLARK. The N. R. A., for instance, did approve the lumber code, and the lumber code contained a provision that a man who went to a factory—a flooring factory, let us say—in Springfield, Mo., at the door of the factory, had to, in addition to the price fixed by the lumber code for flooring, had to pay the freight from either Memphis, Tenn., or some point in Louisiana or Arkansas—the exact points I have forgotten. That was enforced by the power of the N. R. A. was it?

Mr. RICHBERG. As I have previously explained, those provisions have been suspended as far as any price provisions in that code are concerned.

Senator CLARK. I understand the thing finally broke down of its own weight, but the N. R. A. approved the lumber code.

Mr. RICHBERG. Yes; it was approved; and I have repeatedly said here that I have not defended the provision of the lumber code. It was one of our early codes, in which some unfortunate experiments were undertaken, at a time when the industry was in great distress and a great many difficult problems were presented in that situation.

The CHAIRMAN. It is getting quite late.

Senator GORE. I would like to ask one more question. It relates to the matter of administrative machinery. You remarked a minute ago, Mr. Richberg, that some of those who were familiar with the tricks of the trade would trump up devices, undertaking to give themselves advantages against competitors. Undoubtedly that situation does arise. If that is referred to an administrative board, and the party or group that originated the plan should have the controlling voice on the quasi-judicial administrative board that settled it, they would have the inside track. And where would you vest final power and jurisdiction to decide that sort of thing?

Mr. RICHBERG. Only with the public officials of the Recovery Administration, and not with any private authority, and they have no such authority now.

Senator GORE. Of course they would have the right to go to court.

Mr. RICHBERG. Oh, yes; of course.

The CHAIRMAN. The committee is very thankful to you, Mr. Richberg, for your illuminating statement and your candid answers to the questions.

Tomorrow the committee will meet at 10 o'clock, and Mr. Williams will be on the stand.

Mr. RICHBERG. May I suggest that this entire list that I gave, if it is not now incorporated in the record, shall be incorporated?

The CHAIRMAN. Yes; it will be incorporated in the record.

(Whereupon, at 12:15 p. m., the hearing was adjourned until 10 a. m. of the following day, Thursday, Mar. 14, 1935.)

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INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 79

A RESOLUTION FOR AN INVESTIGATION OF CERTAIN CHARGES CONCERNING THE ADMINISTRATION OF INDUSTRIAL CODES BY THE NATIONAL RECOVERY ADMINISTRATION

PART 2

MARCH 14, 15, 18, 19, 20, AND 21, 1935

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INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

THURSDAY, MARCH 14, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to adjournment, at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, Walsh, Barkley, Connally, Gore, Costigan, Bailey, Clark, Byrd, Lonergan, Black, Gerry, Guffey, Couzens, Keyes, Metcalf, Hastings, and Capper.

Also present: Mr. Donald R. Richberg, Executive Director, National Emergency Council; Mr. Blackwell Smith, acting general counsel, National Recovery Administration; Mr. Leon Henderson, economic adviser, National Recovery Administration.

The CHAIRMAN. The committee will come to order.

Mr. Williams, for the purposes of the record, just state your full name and the position you hold with the N. R. A., how long you have been there, and so forth, your background, and then proceed in your own way with your statement.

STATEMENT OF S. CLAY WILLIAMS

Mr. WILLIAMS. My name is S. Clay Williams, of Winston-Salem, N. C. At the present time I am Chairman of the National Industrial Recovery Board, having served in that capacity from late September of last year until the present time.

Mr. Chairman and gentlemen, I have not prepared and am not filing any formal statement. My idea of this situation with respect to my testimony and what the committee might want from me, in view of the fact that Mr. Richberg has covered the territory so widely, is that probably I would be most helpful to the committee if I should simply place myself, if I may say it that way, with respect to this general situation, and then let the discussion take such turns as the committee might want to give it by an expression of interest in any particular part of it. Proceeding upon that basis, therefore, let me start with what we might call the elementals or the fundamentals, with the suggestion that while this N. R. A. thing looks very complicated under some approaches, there is a way to approach it from which it is nothing like so complicated.

It is rather like looking at a tree from a distance, with all the boughs intertwined the one with the other, and therefore finding yourself unable to trace things out, as against standing at the trunk

of the tree, and from that position of fundamentals, seeing just where everything leads to, and what everything's relationship to everything else is. So if I may say it, I am going to place myself on that figure close to the trunk of the tree and speak from that point of view.

Beginning with the act and its objectives and purposes, which I think also represent its values, with a view to getting the segregation of those main objectives and those main values, of course, the act was to work to a relief of unemployment and an increase of purchasing power, relief, and recovery, and somewhat of reform.

In my view of the act, the primary objective, the fundamental in the act, was the provision under which wages should be established as not below a fixed minimum, the effect of which was to guarantee to the workers in the country that whatever the conditions might be, their wage would not be subjected to a competition that would drive it below a certain fixed minimum, fixed as representing a living wage.

If I may translate that fundamental into terms of industry from a manufacturer's point of view and mark the extent of that effect on that side, it was simply the taking out from the list of things that manufacturers and competitors generally compete with each other over, the wage to the extent that it was taken out by the establishment of a minimum below which competition should not be permitted to drive the worker's wage.

That is the place at which we start; that, as I have regarded it, is the fundamental from the point of view of labor in this act. It was the fundamental and the most effective thing with respect to relief and recovery, possibly and certainly had some elements of reform in it.

Senator WALSH. Does not the wage provisions necessarily require maximum hours of labor?

Mr. WILLIAMS. It does, necessarily.

Senator WALSH. So when you are speaking of minimum wage, you mean minimum wage with limitation of hours.

Mr. WILLIAMS. That is right.

Senator KING. Did you have in mind the fact that climatic and geographical and other conditions might affect wages?

Mr. WILLIAMS. I do have that in mind, definitely.

Senator KING. And that depression and profits might affect wages?

Mr. WILLIAMS. Definitely.

Senator KING. Did you take into account the condition which prevails in Great Britain, that you must have profits before you can have employment?

Mr. WILLIAMS. I know of no way to pay wages except out of the profits made out of operation.

Senator KING. And you can, by excessive wages or by excessive taxation, arrest the development of industry and prevent profits, and thereby prevent employment?

Mr. WILLIAMS. That is assuredly a possibility. It presents a question possibly of where that line lies, and I think any differences of opinion are not so much over the principles as over the point at which the principle becomes operative detrimentally instead of beneficially.

Senator KING. You do not advocate the freezing of wages——

Mr. WILLIAMS (interrupting). I do not.

Senator KING (continuing). Any more than you advocate the freezing of profits?

Mr. WILLIAMS. I do not.

Senator KING. Wages have to respond, or they do respond, in every country to demand, do they not?

Mr. WILLIAMS. They do.

Senator KING. And to business activities or business depression?

Mr. WILLIAMS. And there is a limitation, of course, to the extent to which the social purpose involved in fixing a minimum wage can be served without running into some of the things that you are speaking of, Senator.

That looks like a rather simple proposition to start with. It is not as simple in administration as it sounds in the statement, for the reason that when you take wages out of competition below a certain minimum while you are holding the balances evenly between all concerned, in that all are subject to the same rule, and in that theoretically it makes no difference as long as you stay within a reasonable limit, what wage is paid, provided all are paying it, you do run into other ramifications down those roads that give some difficulty.

One of them leads immediately to the fundamental policy, as I see it, in the law of this thing. If there be, as there seems to be, units in industry which are in industry and succeeding in industry because of an advantage taken against competitors through a low wage, an unconscionably low wage, and if their efficiency, the efficiency of those units, is so low that they could not stay in business except for that advantage taken against competitors through that lower wage, then the minute this principle is established, the question is presented whether or not those units, inefficient units, inefficient to the extent that they cannot stay in business except they take the margin to stay in business out of the wage, shall be protected; or on the other hand, whether in spite of what may happen to those groups, we shall go forward and serve a social purpose and a generally desirable purpose of eliminating unconscionably low wages. So we meet a question at almost every turn of the road in this situation.

The N. R. A. on that particular point, up to this time, has always resolved that question in favor of protecting the wage against an unconscionably low position, even though it had some disastrous effect, not upon any great group of operators, but upon that particular group of operators who are so inefficient that, except for taking that margin out of the labor, they would not be in business. But that, I think, is one of the fundamentals in this whole N. R. A. situation, and it is a question of which particular group you are going to appear for you cannot appear for and save the interest of both.

I do not mean to indicate, and I want to emphasize that I do not want to indicate, that there are many units of business that fall within that classification, but there are some, and I am not talking of the small as against the large, but of the efficient as against the inefficient, the degrees of efficiency.

Senator KING. Large units may have inefficient management, and inefficient administration, as well as the small unit?

Mr. WILLIAMS. There are some large units that are very inefficiently managed, just as there are some small units that are very, very efficiently managed.

Senator KING. A large unit may be so large as to reach the position of diminishing returns because of largeness?

Mr. WILLIAMS. Yes.

Senator COUZENS. May I ask, Mr. Williams, if you have had any experience in observing the relative efficiency of the men, the employees, with relation to the wages they receive?

Mr. WILLIAMS. May I ask, Senator Couzens, if you mean in a given industry or as between industries?

Senator COUZENS. Well, with respect to your own observations in the industry that you have been familiar with. I do not ask you to answer for other industries that you do not know about, but from your experience in industry, my question is, have you observed any difference in efficiency of the men or the employees in connection with whether they got extremely low or reasonable wages?

Mr. WILLIAMS. The wage, so far as my individual experience goes, and my direct observation goes, is adjusted to the efficiency of the men. Whether one is the cause and the other the effect, or one is the effect and the other the cause, I do not say; but the greater efficiency is found commanding the greater wage, and the lesser efficiency, the lesser wage; of course.

Senator COUZENS. So I get from that answer that your conclusion is that when men are satisfied, with a reasonable wage, their efficiency is much better than when they are dissatisfied and with a lower wage.

Mr. WILLIAMS. I agree with that.

The CHAIRMAN. All right, proceed; Mr. Williams.

Mr. WILLIAMS. Mr. Chairman and gentlemen: To go to a specific territory where the N. R. A. has had quite a lot of argument, some criticism, some difference of opinion, let me lead immediately into this price situation by listing some things prior to the development of my thinking on that, that seem to have the general support, and I think ought to have the general support of public opinion in this country.

I refer to the elimination of child labor, I refer to the establishment and maintenance of minimum wages that represent a living wage, I refer to the limitation of hours by way of spreading employment as much as possible, and the preservation of proper working conditions, with of course the full liberty of the worker to handle himself in such a way as he and his associates may desire to handle themselves in their relationship with their employer.

With those things planted as a group of things which in my opinion have the general support of public opinion in this country, I lead from that to the question of what happens when you establish those as things to be enforced, and that leads immediately into the fringes of price territory, though not definitely into price territory.

It comes up this way, practically: When you say to a given industry that "you must eliminate all child labor, that you must observe certain minimum wages, that you must observe certain maximum hours", you have in a number of instances in the units of the industry, of course, and maybe on the whole of the industry, placed an additional burden, but forget the case where it is a burden on all of the industry and take the case where it is a burden on some as against others. The answer comes forward, whether actually made——

Senator COUZENS (interrupting). Mr. Chairman, I would like to ask for the stopping of the shooting of these photographs. I do not see how the witness can even think or talk with those things popping in his face all the time.

The CHAIRMAN. Finish with your photographs, gentlemen. And now proceed, Mr. Williams.

Mr. WILLIAMS. The minute you impose those the answer comes forward, or at least the question comes forward from a number of units in a given industry. "That is all right, I would gladly heed and meet those wage requirements or other conditions, but it happens that I am subject to certain relationships with competitors, some of which I do not think are entirely fair; I am the victim of a number of practices on the part of my competitors which cost me enough in my profits and the possibility of return out of my business to leave me in a weakened condition on the question of whether or not I can pay these wages; therefore I am saying to you that while I am perfectly willing to undertake the wages, I think I should be protected from some unfair practice on the part of my competitors, which depletes my capacity to pay wages. I will pay them if you will protect me."

That, in that commonplace way of saying it, presents the question of necessity of going somewhat beyond this territory that is purely a matter of taking care of the working men in industry, and making it possible for the provisions made in his behalf to be effective, without being destructive to other interests that it is in the general interest to preserve—to lead over into the fair practice territory, therefore.

Those of us, so far as I know, without exception, who have worked administratively in this situation and given a good deal of thought to it, feel that there is not any such thing as a full service of the things that we desire to serve for the working man in the situation without getting to some extent over into the other field and undertaking to eliminate those unfair practices that destroy the capacity of a unit in a given industry which undertakes the burden of a contract to preserve its capacity to pay those wages.

That means that we are committed to the policy of permitting, approving, and working out methods of accomplishing the elimination of unfair practices, destructive really in this sense, of the capacity to pay the wages that we demand shall be paid.

That takes various forms. Of course there are certain practices of long standing in industry in this country—they are getting fewer and fewer each year as the commercial conscience improves—but there are practices that involve misrepresentations, practices that involve irregularity of method of the representative of the competitor as against other competitors with customers, but there are others that take perfectly definite forms like selling below cost, or too low, sometimes, expressly for the purpose of getting somebody else's business.

We have had a case presented where definitely in that territory it was a case of "I would gladly pay the wages, but if I am to be subjected to somebody just coming along and because he has the financial strength to do it, cutting the prices out from under me and leaving me no profit at all, then a problem is presented for me."

Let me say that I am not talking in the territory of price maintenance. I am not talking of anything that in my opinion is calculated to or would lift a price level above a normal, or be properly described as maintaining a price. I think the all but unanimous opinion of those whose opinion I know, in and connected with N. R. A., is perfectly definitely against any element of price maintenance, any method of price maintenance, if you will accept my description of price maintenance as a proper definition of that term.

But the point I want to make is that the question of eliminating unfair trade practices all but leads in sometimes to the territory of price maintenance.

We had it in this loss-limitation situation. That is the classic case which represents an example of it. There are some codes in which there is a provision that various distributors shall not sell below an invoice plus, plus a percentage estimated, to enable him to recover a part of his labor charge. That sounds like it goes into price territory. I use it to draw this distinction between what is a price-maintenance provision and what is a prevention of unfair trade practice.

Senator WALSH. Also there are some codes that prevent discounts on payment within a limited time of 10 days or 30 days?

Mr. WILLIAMS. Yes; but mainly in the interest of uniformity of practice, rather than in the interest of affecting price itself.

Senator COUZENS. May I ask if the yardstick of prohibition against selling below cost is an adequate yardstick?

Mr. WILLIAMS. We are having a great deal of trouble, Senator Couzens, in finding just what that rule ought to be. General Johnson compromised it in the retail code by assuming that a fixed percentage—I think it was 5—mark-up from the invoice would be a proper limitation. It was not the recovery of all of the cost. I am corrected and will say that figure was 10 percent—anyway, a fixed arbitrary percentage, which represented only a percentage of the cost or expense of distribution to go on top of his invoice before he could get rid of the goods. But it is exceedingly difficult to draw that line. Stating it in the abstract there is no difficulty so far as my own thinking and my own satisfaction with my own thinking is concerned, in stating it in the abstract; but in working out the rule and applying it, it is an exceedingly difficult thing.

In the abstract, I think the rule should be this: That no provision of that kind should be so fixed as to serve to raise a normal price level above the normal at which it ought to travel. On the other hand, stating the other wing of it, if we are to serve this purpose of eliminating unfair trade practices on the part of one competitor, that is unfairly destructive of the capacity of another to pay a wage, that we have got to follow up that ladder to an extent that serves the territories of eliminating the unfair practices without running into the question of lifting the price level against the general consumer; but we are far short, Senator Couzens, of having written the rule which accomplishes that.

Senator COUZENS. In a number of codes there is a provision against selling below cost of production, and I now more have reference to the manufacturer than I do to the retailer. Is it not a fact that the main prohibition is against selling below cost in some of the codes.

Mr. WILLIAMS. Going over into the manufacturing codes, it is true, as brought out in Mr. Richberg's testimony, that there are something over 300 codes that have cost-accounting methods. I do not know the exact figure, but anyhow something over 300 codes which have written into their structure as originally worked out——

Senator KING (interrupting). May I interrupt and say that there are 560 codes that have provisions relating to minimum prices and cost methods.

Mr. WILLIAMS. And most of that number have a provision for the working out and adoption, with the approval of the N. R. A., of the cost methods to be used as a basis for application and enforcement of these rules against selling below cost, which at that time were contemplated.

Now, as a matter of fact, while in the body of those codes we find that provision, it was coupled with a requirement of approval on the part of the N. R. A. administration before becoming effective or being used for those purposes. I think it was only about 30 of them that eventually had an approval. Thirty-nine is the exact number that eventually had approval of that, and definitely the drift of opinion has been away from attempts to maintain price.

Senator KING. Supplementing the question Senator Couzens asked, is there any effort to maintain uniform prices, regardless of developments and improvements of the individual units under which, or by which, their costs would be considerably reduced below the level of—I do not use the word critically—static cost level of the majority of those in the industry?

Mr. WILLIAMS. There is no approach from that angle, and I think there should be none.

Senator KING. That is to say, if a unit in an industry devises better and more perfect methods—economically or managerially—for the conduct of its business, which results in a diminution or reduction in cost to that particular unit, would you feel that if it fell below the uniform level, that that unit would be prevented from availing itself of those advantages which its genius or its ability or managerial efficiency had evolved?

Mr. WILLIAMS. I think the consumer of the country, which is the population of the country, is entitled to have nothing which should interfere with it having the benefit of anything which will promote its own standard of living as a possible user of goods by reason of that kind of thing, providing we are serving the wage situation and other situations properly meanwhile.

Senator COUZENS. Have you not had complaints about some industries selling below cost, and as a result thereof, have made investigations?

Mr. WILLIAMS. We have.

Senator COUZENS. How many of such cases do you recall that you made an investigation about selling below cost?

Mr. WILLIAMS. I could not give that number, Senator. A few of them; not many.

Senator COUZENS. Not many?

Mr. WILLIAMS. Not many.

Senator KING. Do you mean the cost to the unit or to the group?

Senator COUZENS. Cost to the unit. I have had statements made to me—I do not care to mention names—of instances where they kept lowering their posted prices from month to month until the other competitors found they could not compete, so they made a complaint that this particular industry was selling below cost, and that an investigation was made by the N. R. A., as these allegations and pleas that they were selling below cost required them to quit dropping the price from month to month.

Mr. WILLIAMS. Mr. Smith tells me that there is one example of that, Senator Couzens, in the agricultural fungicide. Of course, the

process that you developed in your question would have one phase if there were a provision in the code definitely forbidding the selling below cost. It would have another if the code went no further than to provide for open prices, that is, the publication or listing of prices; and the very definite drift, as I was saying a while ago, of opinion among those in N. R. A., without anticipating any announcement of policies that may be made in the territory, is away from the attempt in the manufacturing industries to prevent the selling below any given price, but is in the direction of open prices and public information, that is public within the industry, at least, and those dealing with it, as to what prices are, which is an entirely different thing, and does not have, as many of us see it, the element of price-fixing in it at all. It has the information as to what prices are, but stops short of any control whatever as to what the price shall be.

Senator COUZENS. When N. R. A. goes out to establish whether an industry sold or is selling below cost, what does it include in the cost items? A return on investment, and all that sort of thing.

Mr. WILLIAMS. That is right into one of the hardest questions, as you know, of accounting and in N. R. A. The accountants themselves of this country, can get into a war between themselves as to what a proper accounting method is and what shall be called "cost" and what shall be called one kind of cost and another kind of cost; so there is absolutely nothing fixed in that, no absolutely fixed rule developed as applicable as to each of these industries, that is in this question that Senator King led into a minute ago of these three or five hundred codes, in which it was provided that there should be a cost system established, but with all of those hundreds proposed, we have never gotten any further than approving 39, and we had quite some difficulty and an enormous task in checking those out and seeing whether they were proper or not for approval. It is different, Senator Couzens, as you know better than I, in every industry.

Senator COUZENS. Yes; but I know that over the years that the Bureau of Internal Revenue established standards with respect to depreciation and proper return, especially in the case of excess profits, that are readily available to the N. R. A., and I think the using of those statistics and figures that you have gotten over the years there would be very valuable to the administration in this selling below cost. I think it is indefensible for an industry that is reasonably efficiently managed to justify itself in selling below cost. I think, however, that with the availability of these figures that the Bureau of Internal Revenue has that the setting up of a proper cost-accounting system would not be as difficult as may be inferred on the face of it.

Mr. WILLIAMS. I would agree with you that the work that they have done would carry us away down the road on the solution of the task if we are to go into that territory.

Senator KING. However, I might say if Senator Couzens will pardon me, that the lawsuits that we are having, one of which is in progress now—I will not identify it—as to depreciation, costs and such, and method of accounting, has involved the Internal Revenue organization in interminable disputes and with conflicting results.

Mr. WILLIAMS. It has; but there is an element there that is not in the thing that Senator Couzens is alluding to.

Senator COUZENS. No.

Mr. WILLIAMS. Because the return on capital is involved there, and income is involved with a tax on it. In the system that Senator Couzens is addressing himself to, as I understand it, there is not involved any question of the return on capital.

Senator COUZENS. The Senator from Utah was on a committee with me when we had a report of some 500 pages to the Senate of 1926, as the result of an investigation of the Bureau of Internal Revenue; and while the results may be somewhat old, still I think that they are pertinent to this whole problem.

Senator HASTINGS. Mr. Williams, before you leave that price-fixing, I would like to call your attention to one specific case I know of. The practice, I believe, has since been abandoned by the N. R. A., although I do not know definitely. In my State they had an N. R. A. code for the retail hard-coal industry, and there were two independent coal companies, very small companies operating on small capital, the owners doing practically all of the work, in which they were selling coal at $1.85 below the price fixed by the code. They were complying with the N. R. A. in the matter of wages and everything else excepting this price, and the N. R. A. took them into court and compelled them to charge $1.85 more when they insisted they were making a fair profit at the old figure. Has that practice been abandoned in the N. R. A. or not?

Mr. WILLIAMS. I am not familiar with that exact case, Senator Hastings, but the general structure of the Retail Solid Fuel Code under which that case comes, has not been abandoned. That is the answer to your question.

Senator HASTINGS. These two independent companies said that the accountant who undertook to fix the cost came down to them and examined their books and insisted that they were not paying themselves enough salary and were not doing a lot of things which were being done by other companies, and therefore they were not charging the kind of a price they ought to charge. To the consumer who could get coal from them $1.85 cheaper, there was great resentment against the N. R. A.

Mr. WILLIAMS. That situation to which you point represents one of the difficulties into which we run in this sort of a situation.

Senator BLACK. Mr. Williams, may I ask you a question? You have clearly stated what you understand to be the objectives of the N. R. A., as I have heard it expressed. I understand it to be in substance this: The object was to preserve the competitive system, but to withdraw from the element of competition, wages, stated by you to be the basic living wages, and to withdraw from the element of competition, the hours insofar as making those hours reasonable are concerned. Is that what you intended to say, as you did, that that was your idea of the fundamental objective?

Mr. WILLIAMS. I think that is the fundamental, but I do not mean by saying that that is the fundamental objective to say that there are not other objectives.

Senator BLACK. I understand.

Mr. WILLIAMS. Because there are some others.

Senator BLACK. Some others that would arise, as I understood you to say, going from that, you step over to determine whether or not the withdrawal of that element of competition makes it necessary to

a step further and protect the employer in prices which shall not be below cost.

Mr. WILLIAMS. I would say that in two ways, Senator Black, if I may. The way I said it in my original statement, that led to certain fair-practice regulations as indicated necessary because of certain employment conditions imposed. I do not mean by alluding to it that way to exclude the other phase of it, which is this: At the time that this act was under its original drafting and this plan was being worked out, it was not only important, as I understand in the attitude prevailing at that time to take care of the working man to the maximum extent in his purchasing power, in relieving him from want, and to take care of the greatest possible number of them by limiting the hours, but it was also one of the desires to Congress to prevent, as far as it could, the destruction of the business man who himself was under just as definite and just as dire threat. I do not mean to leave the impression that the only reason for operating in this other territory is in order that you might serve the things that you are trying to do in the working man's territory, but I think there is in addition to an independent reason for operating in both territories, a connecting reason for operating in one by way of making possible the sustaining of position in the other.

Senator BLACK. I asked that question because I am leading up to trying to hear your opinion in connection with the three lines of thought, economically speaking, involved in it. The first is that there should be no regulation of hours, there should be no regulation of wages, there should be no regulation of profits, there should be no regulation of unfair practices. That is the old theory. The second is that it is possible to withdraw from active business competition the question of a living wage and fair hours and still leave business just as free as it ever was in connection with other competitive features. May I ask you if there are not a great many elements of competition entering into the efficiency of business and the method of production and the ability to get out the goods for less; are there not a great many other elements in addition to wages and hours?

Mr. WILLIAMS. There are a number of others. Competitors compete over a number of things in addition to wages if they do compete over wages.

Senator BLACK. So that when we withdraw a part of the competition of wages, because that is only the withdrawal of a part, it is simply as you understand it, and as I think all of us understand it, a withdrawal of the competition of the lower wages, those that constitute the living wage as it is considered, and the reasonable hours. That is all that is withdrawn in the way of competition, so far as hours and wages are concerned, is it not?

Mr. WILLIAMS. Put up a bar against competitors competing over the wage to the point of driving it below a fixed minimum.

Senator BLACK. So what that really is is a legislative enactment or rule promulgated as the result of a legislative enactment, which says to all business, to that extent, "When we only regulate hours and wages, we will say that you cannot work a man more than a certain number of hours or so that you do pay him not less than a living wage." And then the question arises as to whether we shall go further on account of that withdrawal of those two competitive features.

Mr. WILLIAMS. Go further, if I may ask, Senator, in any particular direction?

Senator BLACK. I mean this. One line of thought is that while it is perfectly legitimate to affect the competitive system by legislation as to hours and as to minimum wages or living wages, that even then one element of thought is that we should still leave business free to compete on every other feature.

Mr. WILLIAMS. Yes.

Senator BLACK. Now, may I ask if there was not a considerable demand on the part of business to bring about the enforcement of the so-called "fair practices acts" even before we fixed a minimum wage and maximum number of hours?

Mr. WILLIAMS. There was.

Senator BLACK. And is it not true that the same destructive elements to which you refer, in business, with reference to destructive price cutting, are inherent in it, so that those objections would apply even though we did not fix minimum wages and maximum hours?

Mr. WILLIAMS. There has been active recognition and demand for relief against a number of unfair trade practices in this country, independently of the N. R. A. of varying volumes of support in varying industries.

Senator BLACK. From your experience as a business man, do you believe it would be necessary if we did not fix maximum hours and minimum wages, to have legislation to prevent these unfair practices to which you refer with reference to destructive price cutting?

Mr. WILLIAMS. Without speaking to the question of necessity, I think it definitely desirable that unfair practices in industry and business be eliminated as far as it is practicable to do it.

Senator BLACK. You mean with reference to selling below cost?

Mr. WILLIAMS. I mean with reference to everything that can be regarded as an unfair practice. We can get into lots of arguments with lots of people on the question of whether or not selling below cost is an unfair practice.

Senator BLACK. I am limiting myself to that one element.

Mr. WILLIAMS. If we are going to limit it to that, my answer is this, that selling below cost is not always necessarily an unfair practice. It is sometimes an unfair practice. Sometimes, if I may add one other sentence, selling below cost is, in the opinion of a great many men, necessary as a protection against loss of values.

Senator KING. The farmers have been selling below cost for years, haven't they?

Senator HASTINGS. Loss of what, did you say, Mr. Williams?

Mr. WILLIAMS. Values.

Senator BLACK. You mean by that, if a man has a large stock of goods on hand that would deteriorate in value it might be necessary to sell them at once, and even if he sold them below cost, he would still be saving something to himself in the transaction?

Senator BARKLEY. And also to the public.

Mr. WILLIAMS. For instance, there was a time some years ago when the ladies wore shoes with 15-inch tops. The styles changed, and I have no doubt that a great many people were caught with that type of shoe with the high tops, and they were not selling ordinarily in the market, and they had to sell them below cost.

Senator BLACK. Advancing a step further, it is exceedingly difficult, as you state, and I agree with you completely, to determine what is the actual cost of production in the various industries of this Nation; isn't it?

Mr. WILLIAMS. Yes.

Senator BLACK. I have found out, on the question that Senator Couzens has mentioned, in examining a large number of income-tax returns from various businesses, that they frequently did business with subsidiaries, and associates and friends, in such ways that while their actual record showed a loss, when you added up the results from all the companies with which they did business, frequently it would be a gain. It would require multitudes and thousands and sometimes many thousands of people to properly supervise the industries of this Nation to determine whether or not they were concealing profits in that way, wouldn't it?

Mr. WILLIAMS. I assume that the Bureau of Internal Revenue is doing that fully now, as far as it relates to profits.

Senator BLACK. I might state that the investigation of the income-tax returns in the companies we investigated showed they did not, and it was wholly and completely impossible for them to do so with the employees that they had, because contracts were made—for instance, take a company—I do not mention a public utility because of the fact that it is one, but it is mentioned most and it is most easily understood in the public mind. Take a company, for instance, building power lines. It has a railroad company, we will say; it has a construction company; it has various other associates which make contracts with it. It would be practically impossible, would it not, to go into the minute details of all of those contracts, on the part of the N. R. A., to determine whether or not they were really making a profit or selling at a loss?

Mr. WILLIAMS. It is quite a task. I would not say it is impossible, but it is a very heavy task.

Senator BLACK. In the broad objective of business, do you believe that the public would suffer more than business enterprises, or would suffer less, by leaving it to business to follow the old method of competition in connection with selling below cost, or can we more effectively accomplish the result by hiring enough bookkeepers and accountants and investigators to determine whether or not these various businesses engaged in codes are actually selling below cost? Isn't it almost an impossible task?

Mr. WILLIAMS. I think that the public, in the long run, will fare better to leave as much as is possible to leave to competition for settlement, the Government going in for regulation and the prescribing of rules only to the extent necessary to meet certain specific things, either in the way of objects to be attained or practices to be eliminated.

Senator BLACK. The question I asked particularly was, What is your judgment as a business man—you have had a great deal of experience as a business man—with reference to the particular investigations necessary to determine whether or not the thousands and hundreds of thousands of units of industry are selling below cost?

Mr. WILLIAMS. I think the answer to that, Senator Black, was better stated in an article by Mr. Richberg that was published in Fortune Magazine last November or October—I can produce it here—in which he said that his own view, if I may quote him substantially,

and in quoting him express my view, was that if for no other reason than the reason that nobody had ever been able to devise and bring forward a system that promised to do better for the public, he thought that the question of prices generally ought to be left to be worked out through the play of competitive influences upon any given product.

Senator BLACK. With that statement I am 100 percent in accord, and I believe that so far as prices are concerned, and that is the reason I am asking you these questions, that it is wholly and completely impossible for N. R. A. or any other Government agency to employ enough assistants and bookkeepers and accountants to determine when each individual unit is selling below cost.

Mr. WILLIAMS. You are raising, Senator, as you know so well, a question of how far government should attempt to get into these situations. I have stated my view that it should get in only so far as is necessary to serve its own specific aims, that is, to protect labor from an improper and unjust and unfair degree of competition that is destructive not only of its interest and its comfort, but going to the colder, the economic side, destructive of its purchasing power, of its capacity, to contribute to the support of its operation, and to advancing to help maintain the standard of living. I think it has got to go far enough to protect that. I think more than that, that it ought to go as far as is necessary to eliminate the things that are generally recognized as unfair practices.

Senator BLACK. Do you mean by that selling below cost?

Mr. WILLIAMS. Not necessarily. I mean by that some selling below cost that runs into territory which changes the descriptive word used to indicate what we are talking about, "unfair practice".

Senator BARKLEY. Mr. Chairman, I have got to go to the Banking Committee in a few minutes, and I would like to ask Mr. Williams a few questions. If he is not finished by the time I return, I would like to ask those questions. I want to reserve that right, as I have to go now.

The CHAIRMAN. Very well.

Mr. WILLIAMS. To complete that answer I just gave you, Senator Black, may I say this: In this question of selling below cost, in the opinion of those administering N. R. A., there must always be certain standard provisions enabling the holder of goods to dispose of them at any cost under certain circumstances. I speak in the light of that exception.

Senator BLACK. I am asking you these questions because of the fundamental questions involved, and also because I had a number of letters from people in Alabama, complaining to me because they were denied the privilege of selling their goods at a profit in the lumber business. Some of them have written me that they have been compelled to retire from business, although they could have sold their goods at a profit, in fact, they were required to sell them for higher prices than they wanted to sell.

Senator KING. And they could have sold at a profit?

Senator BLACK. They stated so to me in the letters.

Senator KING. I have a number of letters of the same character.

Mr. WILLIAMS. You have in mind that we have suspended that price feature in the Lumber Code.

Senator BLACK. I want to ask you this further question as covering the entire subject. If we are to go to any extent into the question of stopping beyond the minimum wages and the maximum hours, if we are to go to any extent into prices, where we recognize that some would make a great deal more profit than others, and if we are going to grant any privilege at all with reference to prices, would it not also be fair and just to the consumer and to the public to go the next step and say that either by excess-profits tax or by some other method, it is absolutely essential to preserve the buying power by limitation of profits?

Mr. WILLIAMS. You are raising the question of whether or not this country is going to be on a competitive basis or is not going to be on a competitive basis. In my own thinking we have got to be on a competitive basis, or then we have got to go completely off of the competitive basis. I mean that if Government is going to undertake to go into and disturb the present method of doing business in this country, upon which we have realized through the past the highest standard of living that any country has ever attained, and in which we have been able to make available to the citizenship of this country more goods within reach of their pruchasing power for their consumption than any other country ever has had, if we are going away from that to a greater extent than to go in and protect these things that need protection against in order to serve certain social purposes and further than to eliminate certain abuses which nobody would take the responsibility of putting an approval on or trying to defend, then I do not think there is any stopping place within sight of abandonment of the whole system, and turning it all over to Government regulation, to dictate every phase of it, in which I have no degree of faith, for the reason that while the consumer of this country has shown himself able to bear the expense of the mistakes of management of the industries that furnish him his goods and his services, I doubt very much if he can bear the expense of the mistakes of the representatives of the Government bureau cumulated on top of the management representatives, which it must still have. And there are the big losses, of course, that are involved when you go from the one system to the other.

So I am saying that I do not think we can go more than the minimum necessary to serve those specific ends that it is so desirable to serve, without finding ourselves starting away from what has been up to this time in this country, however bilious it may have been in 1929 and following, a very valuable system of conducting business affairs.

Senator KING. You do not believe in the corporative State of Mussolini or the cartel system of Germany, with all of its drastic power that is being imposed upon Germany by Mr. Hitler?

Mr. WILLIAMS. I have not intended to sign on either of those lines.

Senator BLACK. You are stating very nearly the argument that a great many of us used in voting against N. R. A., and the statement that we should either have a competitive system insofar as prices are concerned, or we should have it strictly regulated by the Government so as to prevent unfair profits.

Mr. WILLIAMS. Senator, may I put this in there? When we speak of what we have in N. R. A. or what we thought we had in N. R. A. and what we think we are going to have in N. R. A. the range of opinion runs everywhere from this minimum, if we may call it a

minimum, for there are minimums below that—from that, to a complete regulation. Folks see in N. R. A. what they want to see or what they think they ought to see, or what they think ought to be in the N. R. A. I have given you what I see in N. R. A. very largely, and I think that practically all the values in N. R. A. and the minimum of the difficulties in N. R. A. are in this territory which we have not developed fully, but which we have blazed the trail in, at least. I did not want to commit myself to a statement that that is all that is in there, but we have blazed the trail. I think all of the values and all of the difficulties are in a narrow territory; that when we go too far, we are reaping a minimum of benefit, and doubtful benefit at that, and are reaping a maximum of trouble for ourselves.

Let me go one step further. When the question came up of what recommendations should be made to this committee or this Congress, some of us took this position: As you know, practically all eventually came to take this position, that out of this 2 years of experience, it had developed that there were certain values in this thing that had proved themselves and that were practical of realization. That is, they did not represent any complete impracticability in the way of the attempt to realize on them.

Senator KING. Either through this organization, or some other—the Federal Trade Commission or the Department of Labor.

Mr. WILLIAMS. That leads into another territory, and there are shades of difference between the administration by this kind of administrative unit, and another kind of administrative unit, and some of them, in my opinion, go beyond being shades and take on a good deal of importance.

I could develop an opinion on that if you want to do it, but for the moment, if I may hold to the other, the situation was about this: Out of the 2 years of experience with this thing, we had realized and recognized certain things that were generally admitted as having value and were desirable in American life and capable of making a contribution to American life and business, and even to the stability of the business in America and the security of the country. Those things embraced about the things that I have been talking about here before that most of this discussion has centered around.

Lying beyond that, there was a lot of other territory in which the minds of a lot of people were playing around, as to whether or not there were values or possibilities short of sheer impracticability when you attempt to realize them, what we may call experimental territory, which started with the whole thing experimental.

We have now found out that this much of it seems to present solid value, and we can all walk around in that territory and not bog down, but there are other territories. Some folks want to lead off here in one direction and there in another, and somebody with complete Government control over here, and if we may take those fingers [indicating] as representing the territory in which it has not yet been so definitely proved that there are values susceptible of realization, short of running into so much impracticability and difficulty as to make it desirable to abandon them on the question of practicability, we may regard that as experimental territory, and the recommendation of this committee as to the term of this act came here in terms of another trial period, for the purpose of learning whether or not there are values there.

There are a lot of us who do not want to throw over all these things in the outlying territory. We cannot accept them 100 percent and come here and contend that they have values that we know are ordinarily realizable, which we know we can do in a number of things in this more solid territory. At the same time we do not want to throw them over.

Senator BLACK. May I ask you if it is a correct statement to say that what you desire is a maximum of competition in business?

Mr. WILLIAMS. Short of unfairly destructive practice.

Senator BLACK. Everybody has agreed, have they not——

Mr. WILLIAMS (interposing). May I hang on to that just a minute to be sure I do not get misunderstood there?

Senator BLACK. Yes.

Mr. WILLIAMS. My idea is this, that if you keep the ground rules right, if the ground rules are fair and give each a fair shake at the business and leave no one the chance to deal unfairly with his competitor, then the answer to your question upon that basis is "Yes." I believe in competition.

Senator BLACK. The two things on which there is almost universal agreement in this country that should be retained in the N. R. A., may I ask you if they are not maximum hours and minimum wages?

Mr. WILLIAMS. I know of no issue with that in volume sufficient to be regarded as substantial, provided there can be continued with it an elasticity of application——

Senator BLACK (interposing). We will come to that in a moment. I want to ask you something else. It is true, is it not, that the thing there is most universal agreement in one N. R. A. is the maximum hours and minimum wages?

Mr. WILLIAMS. If by that you mean that there is universal agreement among the people with whose opinion I am familiar in the N. R. A. as to the desirability of establishing a wage below which the workers return shall not be driven by competition, and if there is a similar recognition of the desirability of having a maximum period in each industry beyond which workers shall not be permitted to work, the answer is yes.

Senator BLACK. All right.

Mr. WILLIAMS. But it must be remembered to what extent it is tempered by the recognition, in my opinion, of the absolute necessity of the elasticity of the working period, both in an individual industry and as between industries, having due regard to the competitive position of one industry as against another industry.

Senator BLACK. May I ask you, in your experience in the tobacco business, you would compete—if there was a scarcity of labor, you would compete—for labor, would you not?

Mr. WILLIAMS. With other industries, you mean?

Senator BLACK. Yes.

Mr. WILLIAMS. There is always competition for labor that is usable in one or more industries.

Senator BLACK. And in your tobacco business in North Carolina, you would not only compete if there was a scarcity of labor, with people who were in the tobacco business, but you would compete with others who need laborers, would you not?

Mr. WILLIAMS. That is right.

Senator BLACK. So that your tobacco business does not compete for its laborers merely with those engaged in the tobacco business, would it?

Mr. WILLIAMS. Not except as you are working with employees with an amount of skill or experience in the business.

Senator BLACK. Even then, if you would compete for apprentices——

Mr. WILLIAMS (interposing). When they fail you, you have to get your labor where you can get your labor.

Senator BLACK. If you have a scarcity of labor as there was once in this country, and all of us hope there will be again, at least to a certain extent, and you were paying four times as much wages as your competitor, fixed by a code, and you were working your people in your employment 25 hours and somebody else was working them 48 hours, which one of them would have the advantage in that competition for labor?

Mr. WILLIAMS. On the factors of the case as you state them, the man who was working longer hours would of course have the advantage of the labor market——

Senator BLACK (interrupting). Which one would have the advantage in getting laborers?

Mr. WILLIAMS. The man with the high rate would have the advantage.

Senator BLACK. The man with the high rate and the shorter hours?

Mr. WILLIAMS. That depends upon the difference between the rate and the hours. You can establish extremes on short hours with high pay, against the extremes on the other side that will throw the answer the other way. I mean that the hourly rate starts as desirable if it is high, and there is desirability of having hours that are not too long, because, of course, the worker wants as high a rate as he can get and he does not want to work too long a number of hours to get a certain amount of money, but in the ultimate the test comes on the weekly pay roll.

Senator BLACK. That is right.

Mr. WILLIAMS. Because what he lives out of is not the hourly rate, but it is his weekly envelop that he lives out of.

Senator BLACK. My question must not have been absolutely clear, because what I want to ask you is this: Is it true or is it not true that workers are more inclined to go where they get the most money and work the shortest hours?

Mr. WILLIAMS. Except as that results in a deficiency of the pay in the weekly envelop.

Senator BLACK. I am talking of where they get the most money, whether it is weekly, monthly, yearly, or 10-year period. Are they more inclined to go where they get the most money by working the shortest hours, or are they more inclined to go where they work the longest hours and get the least money for their work?

Mr. WILLIAMS. The answer is this: The worker is inclined to go where he gets the maximum amount of money in the weekly pay roll.

Senator BLACK. All right. Then it is true, is it not, that the worker is inclined to go where he gets the maximum amount of money. I am not talking of the rate per minute, but the maximum amount of money, and working the shortest hours. That is correct, is it not?

Mr. WILLIAMS. That is correct, subject only to this, that the conditions of work there, including the period of work there, are not such as to discourage him from taking that higher weekly return.

Senator BLACK. Surely. He would not want to go where he was going to get higher wages and short hours for a week, when he could go and get a yearly job. We all admit that.

Mr. WILLIAMS. And in another phase of it, too, a man will pay something out of a weekly pay check covering 60 hours to get the 60 hours down, for instance, to 48 hours. He does not want to work 60 hours to get the same amount of money that he could get in 48 hours, and he will pay something as a sacrifice out of his weekly pay envelop to be relieved, ordinarily, from working 60 hours, down to working only 48 hours.

Senator BLACK. Now, Mr. Williams, we have it agreed, and I think we have, that it is an actual tendency of workers to go where they get the most money and work the shortest hours.

Senator COUZENS. The most per week.

Senator BLACK. Per week, per month, or per year.

Mr. WILLIAMS. If you describe it as a tendency, I am subscribing to it. There are reasons why there is not a full liquidity in that situation, which you are familiar with.

Senator BLACK. And we have agreed also, as I understood you to testify, that there is a competition between industries for labor. Is it fair to have some industries working people long hours at a smaller aggregate pay, and force other industries to work them short hours at a much larger amount of pay?

Mr. WILLIAMS. There are instances where it appears to be entirely fair so to do.

Senator BLACK. That is, fair to industries.

Mr. WILLIAMS. There are instances where it appears to be entirely fair.

Senator BLACK. Is it fair to do that between the cement and the asphalt industry?

Mr. WILLIAMS. Without bringing it to a specific industry for the minute, if I may, Senator, develop my answer a little bit more, we have to pay attention to the competitive situation between industries when we go to resolving questions in territory into which your comment is directed, and of course where you have a direct competition between two industries and you put a provision for shorter hours on one than on the other, with directly competitive conditions prevailing between them, you are setting up a situation which is subject to the criticism that you are talking about.

Senator BLACK. That has been done on cement and asphalt, hasn't it? I notice in the book that was supplied to me that they had different hours.

Mr. WILLIAMS. There are a number of instances where the question of whether or not that thing that you are talking about is not true, is presented; and let me say this with respect not only to that one but to all of them, it is not the fault in the principle we are trying to work on, but in the applying of that principle, and what we are trying to do is to work out all of those cases and eliminate all of those inequities that are in there; but there is one phase of this answer that I have not been able to touch yet.

After admitting that where you have competition between two industries and you put one on long hours and the other on short hours, nothing else appearing, you have prima facie established a case of unfairness. There is another group of industries between which there is not that directness of competition which controls you in what you do with one by what you have done with the other.

They stand entirely independent, the one from the other, in the respect in which you are talking about it.

There are a number of those in which there would seem to be no reason for taking the same action in the one that you take in another, and at least you are at liberty to let another factor of this situation come into consideration. That is what the effect upon the product of an industry is, because there are certain industries in which you can shorten hours and rates of wages with a minimum of effect upon the cost to the consumer of your so doing, with a minimum effect in the form of retardation of volume, which is retardation or loss of industrial activity. There are other industries in which the limit as to how much you can do in the way of shortening hours and raising wages short of affecting consumption, and therefore short of maintaining maximum production, lies much closer in.

Now, upon the basis of a study of the law and a consideration of all of the factors involved in each of those cases, we find situations under which in one industry you can do a whole lot with both wages or limitations, without establishing this back-fire on the volume of business and the shortening up of industrial activity in the industry, and, if you want to go to the other end, without diminishing the standard of living of the people by cutting them off from the availability of the price that they can pay for the product of that industry. But contrasted with that, there are other industries in which, if we are a little too tight on this question of hours, or a little too liberal on this question of wages, then immediately we can establish a situation where you choke off consumer ability to buy the volume of goods necessary to sustain the production.

The net of all of which is that in our view of it, there must be in some administrative body, somewhere, the authority to look at this kind of thing, and the duty at looking at the kind of thing that I am talking about here, as in one industry against another, and all of it tested by the general good in terms of maximum employment, maximun purchasing power, and avoiding the choking of the consumption of goods, and therefore production of goods, and that there must be an application of a rule arrived at in consideration of all of those elements so as to avoid doing hurt where we are trying to be helpful instead of hurtful.

Senator BLACK. I would like to ask you just one other question, and then I won't ask you any more.

Mr. WILLIAMS. May I add just one more sentence?

Senator BLACK. Surely.

Mr. WILLIAMS. I do not want to discuss it, but I want to remark as a part of that answer, that the question of seasonal peaks of industry has its relationship to this territory that we are speaking of. I do not care to develop it except as you want me to.

Senator BLACK. I just want to ask you one other question, which I think you can answer very briefly. You are more familiar with your business than any other business, are you?

Mr. WILLIAMS. I hope so.

Senator BLACK. Do you believe that your business would be injured if we abandoned everything like price-fixing or selling below cost, and all of those so-called "treatments", and the numerous regulations necessary to bring it about, and limited our law to the maximum hours and minimum wages? Do you believe your own individual business would be injured or helped?

Mr. WILLIAMS. Let me answer that this way: If I may go back to the period when I was serving as chairman of a committee for my industry in an attempt to get a code here before I was connected with the N. R. A., my whole position with respect to what we should do was to come in here and get the regulations written for wages and hours, elimination of child labor, and establishment of working conditions, and ask for nothing whatever over on the other side.

Senator BLACK. That was your idea of what was best?

Mr. WILLIAMS. Which, as I say, by way of answering that part of your question, that that was my judgment; but do not let me say that—I am unwilling to say that—without saying that I realized that it is not every industry in this country or every operating group in this country—whether they be in trade or manufacturing, or what not, which was in position to do that.

I think it would be an ideal thing if we were all in position just to take the added burden of doing what ought to be done by way of protecting and preserving purchasing power and the standard of living of the worker, and not have to go into other territory, but it is not everybody that is in an industry that is free of vicious trade practices, for instance.

Senator HASTINGS. Mr. Chairman, I just want to ask one or two questions, in order that I may get Mr. Williams' idea. I want to say that my thought about this is, and I want to see how completely you agree with me, that the maximum that ought to be done by N. R. A. or some other administrative body should be to approve of a voluntary code, assuming now it can be done legally, which I have very grave doubt about, approving of a voluntary code in an industry in which the minimum wages are fixed, the maximum hours are fixed and other practices that the industry itself would like to avoid, some of which they cannot avoid because others are doing it.

My own thought about it is that if you would take that industry and take a certain proportion of it that represents the volume, certainly a majority and perhaps two-thirds of the volume and two-thirds in the number, and let them write their own code, and let that code be approved by some governmental agency and enforced by some governmental agency, I have always thought that that is as far as you could reasonably go. I am wondering how near that comes to agree with your general thought about it.

Senator KING. May I interrupt, Senator? Of course you have in mind the fact that there are interstate and intrastate activities in industries, and I suppose, and I am asking for information, that you are speaking now of what might be denominated interstate in contra-distinction to intrastate, because obviously the Federal Government has no right to go into the State in respect to intrastate activities in business.

Senator HASTINGS. I qualified my question by saying if it could be done legally, and the thought, when we started these hearings, the

thought I had in mind was that the administration was going to recommend that it be limited to industries engaged in interstate commerce. I think it would help industry if we could go farther than that, perhaps, and permit any industry voluntarily to come and get an approval of some governmental agency, and in doing that the governmental agency could take into consideration the geographical location of certain parts of the industry and make exceptions as to that, and do a great deal to help that industry. Of course then that would involve the conditions under which they could sell below cost. As you have stated a moment ago, there are conditions and there are times when it is necessary to sell below cost, and all of that. That, it has always seemed to me, would make the foundation for doing the maximum. I do not think we ought to excel that unless it is possibly the industries dealing in natural resources, which is another question. It might be necessary to deal with them——

Mr. WILLIAMS. I have left those apart in my testimony, recognizing that these natural resource industries do present an individual problem of their own which is quite different from your general industrial problem.

Senator HASTINGS. My own thought is that the Government ought not to enforce one upon any industry. I am wondering how nearly you agree with that suggestion.

Mr. WILLIAMS. I have to say so many sentences in answer to that question that you will develop a suspicion that I am not going to answer it, but if you will be patient with me, I will get to the answer.

Let us start with Senator King's question as a phase of your answer. The question of legal possibility of course is in it. The question of practicability of enforcement or maintenance, without getting into it much, is also in it and presents one of the limitations.

Addressing myself first to the legal question, without wanting to talk in terms of rendering any legal opinion thereon, but speaking to it only as describing it, the range of opinion as to what can be done legally under these contentions that you are fooling with interstate commerce goes everywhere from the present status of the opinions of the Supreme Court of the United States on through to a contention for a principle that it is perfectly competent for the Congress of the United States to declare in one sentence that all of industry is affected with a public interest.

Senator KING. That would not make it so, would it?

Mr. WILLIAMS. As I understand it, it would not make it so, but I am speaking only of contentions and denying any desire to attempt to rule on them.

Senator KING. Congress does not have the power of Stalin yet, does it?

Mr. WILLIAMS. I do not think so.

Senator GORE. Just a minute. There is an implication in all of this that Congress is not omnipotent.

Senator HASTINGS. I should like Mr. Williams to develop his answer to my question, as he stated.

Senator CLARK. If Congress passed a law declaring that a sheep tail was a leg, that would not make it so.

The CHAIRMAN. Go ahead, Mr. Williams.

Mr. WILLIAMS. I do not mean to try to get myself into the disposition of any of these legal questions, but only to get myself in the

position to respond intelligently, if I can, to Senator Hastings' question.

With that wide scope and great number of contentions as to what can legally be done on the one side, you have on the other side what can practically be done. I think the fact is that, whatever may be held in the legal territory, probably the line as to practicability lies this side of the line of legality.

Now, if I may move back against the trunk of my tree and look at your question and outline how it presents itself as you attempt to work out and administer a rule for serving those purposes that you are talking about only through voluntary codes, here is about the situation that you find yourself in. Let us start slowly and hold onto that basis of voluntary codes and nothing else.

Senator BAILEY. At that point, the voluntary code would be a code to which industries assented voluntarily. Won't you have to take into consideration that there would be considerable numbers of industries which would not assent?

Mr. WILLIAMS. More than that, Senator Bailey, we have to take into consideration that in any given industry there will be found a number of dissenters from the will and the proposal of the majority.

Senator BAILEY. If you stick to your voluntary theory, will you assume they will all come in?

Senator KING. Assume only a portion will.

Senator HASTINGS. Senator Bailey, may I make certain that Mr. Williams understands my question. I had in mind that the certain number in an industry that wanted a code would compel a certain minority to join or be under it.

Senator BAILEY. I would like to raise the question, what power have people in America or the Congress or industry, to compel industries to do things?

Senator HASTINGS. Senator Bailey, I have just assumed now that it is legal, for the purpose of my question. I have assumed, for that purpose, that it is legal.

The CHAIRMAN. All right, Mr. Williams. Answer the question.

Mr. WILLIAMS. Let me start then where I was with the approach upon the question upon the basis—we cannot make a recommendation that it should be approached solely from that basis. I am premising my answer on the factors of his question. If we are going to start from the basis of an assumption that we are going to have no involuntary quality whatever in those codes, in this code procedure, that it has all got to be wholly voluntary, the first thing we run into is this: An industry comes forward and says, "We want a code. Here is a list of the things that we are willing to do for others and that we want to do for each other. We want approval on them." Our first question is, Is your industry unanimous on this? And take the case which the President referred to historically, that 85 or 90 percent appear to be in favor of it and there are 10 or 15 percent that won't agree to the adoption and enforcement of that. We immediately have presented a question which is calculated to drive us away from the purely voluntary code position which was incorporated in your question, Senator Hastings.

Senator HASTINGS. No——

Mr. WILLIAMS. To this extent, I think we are in agreement——

Senator HASTINGS. Just so that you understand it.

Mr. WILLIAMS. Just there is presented this question that you referred to in the supplement to your question or explanation of it, as to whether or not we do not have to have a power to enforce upon the involuntary as attested by their attitudes, upon this 10 or 15 percent, the will of that 85 or 90 percent. That is the case to which the President spoke when he said, as I understand it—I do not want to be interpreting him here—that there must be a power to keep a recalcitrant 10 or 15 percent from completely demoralizing a whole industry in which 85 or 90 percent is willing to go along certain constructive lines, abandoning certain destructive and unfair and harmful things, and taking burdens beneficial to the workers in that industry.

I have thought that that was a perfectly sound position to maintain as far as practical to maintain it. A constructive position through that territory; that is, a question of the enforcement of a code agreed to by a heavy majority of an industry upon a dissenting minority in that industry.

That is one phase of the question. Administratively you meet it in another form a little bit later. After you have handled all of the industries that have come forward through their majorities and asked for codes and you have approved codes and made them applicable and attempted to enforce them on the minorities in those industries——

Senator BAILEY (interrupting). Mr. Williams, before you leave that phase and go into another, how do you conceive of a majority of any industry having the right or the power to enforce its will upon a minority in America?

Mr. WILLIAMS. Except under the authorities of this law, I think the answer is that they cannot.

Senator BAILEY. Now, let us make an analysis. Suppose all of the Negroes in America, 75 percent of them, should vote to return to slavery. Could they impose slavery upon the other 25 percent?

Mr. WILLIAMS. I do not think there is a chance.

Senator BAILEY. We have adopted in America the protection of the right of the minority, and there is the right of the individual. It is declared to be inalienable. How can you reconcile the idea of enforcement of regulation or the activities of the minority by a majority in the light of the inalienable rights guaranteed under the Constitution?

Mr. WILLIAMS. Without wanting to speak to the legal possibilities or the legal questions involved, I have trouble in my own mind in accepting the proposition stated so well by the President, I thought, in the form that no 10 percent of recalcitrants in an industry should be permitted under the emergency that prevailed in this country 2 years ago to demoralize the industry contrary to the general interest.

Senator BAILEY. How about 40 percent?

Mr. WILLIAMS. You are getting into doubt there.

Senator CLARK. When you do compel a recalcitrant minority in an industry to come in against its will, then your code has certainly ceased to be a voluntary code.

Mr. WILLIAMS. In that respect, yes.

Senator KING. Do you think, Mr. Williams, adopting your thesis, that 80 or 90 percent ought to compel the minority, and the 80 or 90 percent having formulated a code which they all expect all to conform to, do you think that the Steel Trust which has more than 80

percent of the steel in the United States, and if they were the only ones that were permitted to formulate a code, do you think that they would not formulate a code which would perhaps perpetuate themselves in power and would strangle competition and compel the others to accede to their policies?

Mr. WILLIAMS. I think the answer is that they would not, for the reason that whatever code they prescribed has to have official sanction after complete study of whether or not it would be approved, and if a code were permitted to go to the length that you are talking about, in its effect, I would say that there had been a failure of proper administrative scrutiny meanwhile, and that it was a matter of improper administration or default in duty.

Senator KING. The bureaucratic benediction upon the Steel Trust in that case would give to it sanctity and make its policies proper.

Mr. WILLIAMS. I do not mean to close the door on any degree or extent of scrutiny of any code provision as to whether or not it works out in the direction that you are indicating.

The CHAIRMAN. Mr. Williams, Senator Hastings based his question on two-thirds, as I understood it, in number, and two-thirds in volume. Let us get back to that question of Senator Hastings.

Senator CONNALLY. On the assumption that it could be done legally, too.

The CHAIRMAN. Yes, on that assumption.

Mr. WILLIAMS. If I may pick up one thing that was in Senator King's question and then go forward from it to this. This question of compelling a minority to do things, and I think this is appropriate to Senator Bailey's question, too, there should be kept in mind a clear line of demarcation between compelling a minority of an industry to do things that fall in a general classification, and compelling them to do or refrain from doing things that fall in either one of these two particular classifications, first, compelling them to do the things which mean paying their labor a living wage and thereby serving socially desirable ends, and compelling them to refrain from things that are unfair in themselves or are unfairly destructive of certain other legitimate objects found in the first category.

In my thinking, I am not talking in terms of the imposition upon somebody who is unwilling to have anything imposed upon him of certain provisions; the first test that I apply is whether or not the thing that we are talking about imposing is one of those things which falls in one or the other of those categories.

Senator CLARK. In those cases, you are compelling them against their will to pay assessments for the support of the Code Authority under threat of criminal prosecution.

Mr. WILLIAMS. The assessment question is an exceedingly difficult question, that has to be handled, I think, separate and apart from the other questions involved here, but if we can once get to the point where we can say that it is fair for 85 percent to be supported in imposing the provisions of a code upon the whole 100 percent—the other 15 percent with themselves—then in my thinking it is not particularly difficult if we are moving from the assumption that the code is beneficial either to the industry or in the general public interest is beneficial, it is not exceedingly difficult for me to get to the point of holding that everybody under the code should make a fair contribution to a reasonable expense of maintaining the code.

Senator KING. Supposing many of them believe that the code was not beneficial? You would compel them—the 75 or 85 percent—would compel them to think that way. I think that the democratic principles as announced by Thomas Jefferson are the things which will benefit this country most, economically as well as politically. I would not like to see a law passed to compel Brother Hastings and my Republican friends, whom I regard as recalcitrant, to accept a Democratic bill. [Laughter.]

Senator HASTINGS. You are doing it right along. [Laughter.] [Applause.]

The CHAIRMAN. All right, Mr. Williams. Let us have order in the committee room.

Senator CONNALLY. May I ask one question right there? You are necessarily assuming, of course, in all of your answers, that you have the power to compel the minority to come into what is a so-called "voluntary code"?

Mr. WILLIAMS. I assumed that.

Senator CONNALLY. If it did not have that power in the case of voluntary codes, it would not have the power in involuntary codes.

Mr. WILLIAMS. That is the exact point I was going to cover.

Senator CONNALLY. That question reaches the whole N. R. A. pattern. If they have not got that power in the case of the minority, they have no power at all.

Mr. WILLIAMS. That is right.

Senator CONNALLY. You have to assume the power to do it before you can answer it intelligently, I believe.

Mr. WILLIAMS. I think it all resolves itself on an original determination as to what it is you are going to do, that the Congress wants to do.

Senator GORE. At that point let me ask you a question. Does your statement include or exclude an admission that the minorities have some rights which no majority however powerful has any right to invade?

Mr. WILLIAMS. I have no issue with that principle, Senator Gore. I was working back to that when I made my observation a minute ago; that when you begin to talk about imposition of anything on anybody, I want to know immediately in my own thinking whether you are talking about an imposition which can be justified for the public good or whether you are talking about imposition just for the imposition's sake.

Senator HASTINGS. Mr. Chairman, what I am particularly trying to get from the administration representative is whether or not in extending this law, whether we ought to authorize a code to be forced upon an industry where nobody in the industry wants it written. That is the particular thing I want to know now.

Mr. WILLIAMS. That is the second leg of this answer that I have been trying to give you, Senator Hastings, and I will proceed to describe it now.

After we have passed the point where we have codified all industries that have come forward through their supposed majorities and proposed codes which we have undertaken to approve after scrutiny, and enforced upon the minorities in those industries, the actual fact was that with that work done, it was found there were still other industries who had not seen fit to come forward. In some cases, minorities in those industries had come forward, but the admitted majority was lying back; thus presenting your question exactly.

That is in N. R. A. terms, as contrasted with the question of imposing a code upon a minority in an industry, the question of imposing a code upon a minority industry. Now, you get into a great deal more trouble when you get to that than you were in, in the first question, in my opinion, for the reason that you are running into a great deal more of difficulty of enforcement when you attempt to make a whole lot of people do a whole lot of things that only a small minority are willing to undertake to do; and yet there are reasons that sound quite plausible for going that far. Those reasons being found in some cases in an unconscionably low wage in an industry that fails to come forward, presenting the question of whether or not the Congress is willing to bring forward the great majority of industry that is willing to undertake these additional burdens and to get these eliminations of unfair practices, whether they shall be required to go forward and do that, with a percentage of industry lying back and undertaking no similar burden. The record in N. R. A. up to this time has been, as you know, and let me put it in this record again, that there has not been, as Mr. Richberg said, a single case of the imposition of a code by N. R. A. under those circumstances.

Senator HASTINGS. Isn't that due to the fact that most industries felt it necessary to write their own or they would have one written for them?

Mr. WILLIAMS. I cannot estimate the extent to which that idea was effective, Senator. I admit in answer to your question that it was in the air. People recognized it as a possibility.

Senator KING. Isn't it a fact that important factors in industry saw an opportunity as they believed under the code to get benefits and to abrogate the Sherman and other antitrust laws, and to impose upon the people monopolistic practices, or rather that they would obtain more or less of a monopoly in the industry in which they would operate under the code, which they would obtain from the N. R. A.?

Mr. WILLIAMS. I am not in the position to charge that that was true, Senator King; but if I may answer it in this form, I think this is true, staying short of saying that I think any particular industry came forward with a definite motive and purpose of establishing for itself a monopoly, I think this is true——

Senator KING (interposing). Why was it so insisted upon by Mr. Johnson and I think by Mr. Richberg, although I will not mention his name [laughter], but those who were the ardent protagonists of the code, that all reference to the antitrust laws should be eliminated, and when Senator Borah and a few others tried to get in provisions that the antitrust laws should be maintained, we were vigorously opposed.

Senator HASTINGS. We wrote it in the law, didn't we?

Senator KING. No; we wrote in the law that we repealed, the antitrust law.

Senator HASTINGS. You cannot blame anybody but Congress for that.

Mr. RICHBERG. May I interrupt to say that in the original draft of the law presented, there were antimonopoly provisions, although they were added by the Senate, but they were added by the Senate.

Senator CLARK. It did abrogate the antitrust laws pro tanto.

Senator KING. What does section 5 mean? In section 5 it states, title 1. [Reading:]

While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for 60 days thereafter, any code, agreement, or license, approved, prescribed, or issued and in effect under this title and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Mr. WILLIAMS. Senator, I can give you a personal answer to that question. I cannot attempt to give you an answer for all industry. My own idea with respect to that provision was this: It is a matter of almost universal attitude among the men in the management of industry in this country, that one of the most hazardous sports that one can indulge in is to sit down with competitors and talk over the industry. Even a sitting down and talking over in a group handling things, perfectly innocent of violations of the antitrust laws, is an exceedingly dangerous thing to do, and I do not know anybody in industry who likes to do it.

Now, this whole code structure was premised upon the heads of industry sitting down and talking over and working out and proposing plans and going one step further, it was in the contemplation under this N. R. A. Act, that some of those plans would at least be questionable under certain provisions of the antitrust law, and I understood that provision in the N. R. A. Act as clearing the atmosphere for the men of industry to do what the act contemplated they would do, and as giving them reasonable degree of safety in pursuing those contemplated methods, so long as they stayed within the bounds of things that would be approved in the codes authorized under that act.

Senator CLARK. But there is no limitation on what would be approved in the codes, is there?

Mr. WILLIAMS. Very definite limitations, I think, Senator Clark.

Senator CLARK. Let us take the case we have been talking about at various times, because it happened to be a particularly flagrant case, the Lumber Code. Those people would certainly in the absence of N. R. A., if they had gotten together and had a meeting and determined to fix prices and install Pittsburgh-plusses and indulge in every other monopolistic practice that the antitrust laws had been designed to guard against, they certainly would have been subject to prosecution under the Antitrust Act.

Mr. WILLIAMS. I agree with you on that.

Senator CLARK. On the other hand, because they did write those things into the code which was approved by the N. R. A., they were exempt from any such prosecution. That is correct, is it not?

Mr. WILLIAMS. Yes.

Senator CLARK. So that the effect of the N. R. A. was to authorize any sort of a monopolistic practice that the N. R. A. authorities were willing to approve.

Senator CONNALLY. I am not responsible because I did not vote for the N. R. A. when it passed, but isn't it fair to say it connection with what was read by Senator King, and the question of Senator Clark, isn't it fair to say this, that what that meant was that we have an antitrust law, and we superimposed on that the N. R. A. in which these codes are made up and are finally sanctioned by Government authority, and that to the extent that the Government specifically approved the doing of these things in the code, that it is not consistent then for the Government to prosecute them for violating the antitrust law. Isn't that what was meant by that particular suspension?

Mr. WILLIAMS. That is my understanding of it, and I do not know anybody who is relying upon those provisions there for an immunity beyond the limits that you lay down in your statement.

Senator CLARK. We will all agree on that. It has repealed the antitrust laws pro tanto. They have repealed the antitrust laws to the extent that any of these provisions may be sanctioned by the N. R. A.

Senator CONNALLY. Exactly. Because you had an antitrust law in which you declared certain things to be illegal. Now you come along and say, "We are going to do something else; we are going to have these codes, and the Government is going to approve them and say thereby that you can do certain things as set forth in the code."

Mr. WILLIAMS. In spite of the provisions of the antitrust laws.

Senator CONNALLY. And to the extent that the Government approves those things, you thereby exempt them from the provisions of the antitrust laws. Is that not the legal consequence?

Senator CLARK. I do not think there is any disagreement between us.

Mr. WILLIAMS. And I do not find any point at which I am in disagreement with any of your interpretations.

The CHAIRMAN. Have you finished with your statement, Mr. Williams?

Mr. WILLIAMS. I think if I may add one sentence, that I think what I said in answer to Senator Hastings' question indicates that the line of practicability of enforcement successful to the administration of the principle lies this side of the legal line. I am content with the answer if the Senator is.

Senator LONERGAN. Mr. Chairman?

The CHAIRMAN. Senator Lonergan.

Senator LONERGAN. Mr. Williams, allowing for the attractive features that are regarded as legal or may be regarded as legal of the N. R. A.——

Mr. WILLIAMS (interposing). Did you say the attractive features?

Senator LONERGAN. Yes.

Mr. WILLIAMS. Thank you.

Senator LONERGAN. Do you believe there is any substitute for the operation of economic law?

Mr. WILLIAMS. In the broad, no. I think there is a possibility of the application of certain aids and protections to serve specific phases of it, of the country or of the processes of the business of the country. I think there is a place for the application of some of those things falling far short of any attempt to substitute the operation of economic law with an artificially erected scheme for the control of the things that are attempted to be controlled.

Senator LONERGAN. Do you know of any successful attempt permanently of price maintenance?

Mr. WILLIAMS. I am sorry, but I missed the first part of that question.

Senator LONERGAN. Do you know of any attempt at price maintenance that has been successful on a permanent basis?

Mr. WILLIAMS. In the N. R. A., or open wide enough for me to answer with the tariff?

Senator LONERGAN. Well, everything.

Mr. WILLIAMS. In N. R. A., if by price maintenance the application of some rule that lists the price of a given commodity above its

normal level as against just protecting against being dragged below that normal level through unfair practice, and answering wholly on a personal basis, I do not think price maintenance as such has been a successful procedure, but I use "price maintenance" in the sense of a device and not as including the elimination of abuses of price that bring things below the normal.

Senator LONERGAN. Do you believe that we ought to have a system of limitation of profit?

Mr. WILLIAMS. My theory with respect to where price and profit and so forth should be determined lies in the quotation I made from Mr. Richberg's Fortune article earlier in the morning, when I said that I knew of no better way to work out what price should be, which means what profit should be, subject to a good many other things, than to leave all of it subject to the full play of competition except as there may be eliminated from that competitive play, things that are unfair, and except as there might be imposed upon the various competitors, certain burdens necessary to serve certain social interests that we developed.

Senator LONERGAN. Is not this a fact, that where industry has abundant capital, modern equipment, efficient management, which would be ownership or management, that that concern can outsell concerns that are not so equipped, in the open market?

Mr. WILLIAMS. If that leaves the door open, as I understand it does, to put in the question of efficiency, those things you are talking of are elements of efficiency in trade.

Senator LONERGAN. Yes.

Mr. WILLIAMS. Of course the answer is that the efficient can take goods to the consumer at a cheaper price than the inefficient can.

Senator LONERGAN. And is not this true, that a great many concerns sell their products direct? They have no commission merchant, they do not have to pay a commission of from 5 to 7 percent, and sell their output direct. That is true, is it not?

Mr. WILLIAMS. There are lines of industry that work direct to the consumer.

Senator LONERGAN. Now we will take a cotton manufacturer in New England as against the cotton manufacturer in the South who has the benefit of a differential. What is that differential and what advantage is given to the southern producer over the New England producer?

Mr. WILLIAMS. My recollection of the differential is that it is $1 per week on the minimum wage, but that is not the only differential that is in that situation. That is the wage differential. Independently of the codes, there is another and perfectly arbitrary differential in that same situation that traces back to the perfectly arbitrary structure of the railroad freight rates in this country, under which it is an actual possibility to ship a thing from some point up in New England or West down into the South, at a rate that is very much smaller than the rate on the identical thing shipped from its point of destination to its point of origin on a reverse of the route.

Senator LONERGAN. Is the differential based on that? On the freight charge?

Mr. WILLIAMS. No; it is not. And that is my criticism of these situations, in which the necessity of differential has not been recog-

nized. I have no opposition to the differential theory if in working out differentials you can take into consideration all of the elements that affect the status of the New England manufacturer, for instance, as against the southern manufacturer, but I do object to this idea of just taking one phase of that difference between the two manufacturers and basing and applying and enforcing some rule that rests on one phase of it instead of on all phases of it.

Senator LONERGAN. We had some figures here the other day on the profits of industry for the last 2 or 3 or 4 years. Are you sufficiently familiar with the situation to tell us whether or not a large percentage of the business in this country paid dividends out of surplus that was earned prior to 1930?

Mr. WILLIAMS. Within what period of time?

Senator LONERGAN. We will take from 1930 up to 1934 or 1935.

Mr. WILLIAMS. They did pay enormous amounts out of surplus by way of meeting their dividends.

Senator LONERGAN. So that those dividends were not paid from earnings during that period?

Mr. WILLIAMS. That is the fact.

Senator GORE. I saw a statement, Mr. Williams, that in 1931, 1932, and 1933, and 1934, they have paid out 30 billions more than they took in.

Mr. WILLIAMS. I missed the percentage that you mentioned.

Senator GORE. 30 billions. During the 4 years 1931, 1932, 1933, and 1934.

Mr. WILLIAMS. Without having the exact figure in mind, that figure does not surprise me.

Senator GORE. Last year it was 3 billions.

Mr. WILLIAMS. That is the key to this statement that was in an earlier stage of this examination here.

Senator GORE. Will Mr. Williams be back?

The CHAIRMAN. Mr. Williams will be back. The committee adjourns now until 10 o'clock tomorrow morning.

Senator GORE. Will he be here?

Mr. WILLIAMS. Yes.

(Whereupon, at 12 o'clock noon, the committee adjourned until 10 a. m., of the following day, Friday, Mar. 15, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

FRIDAY, MARCH 15, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Connally, Gore, Bailey, Gerry, Guffey, Couzens, Keyes, La Follette, Metcalf, and Hastings.

Also present: Mr. Donald R. Richberg, Executive Director, National Emergency Council; Mr. Blackwell Smith, acting general counsel, N. R. A.; Mr. Leon Henderson, economic adviser, N. R. A.

The CHAIRMAN. The committee will be in order. You may proceed, Mr. Williams.

STATEMENT OF S. CLAY WILLIAMS—Resumed

Mr. WILLIAMS. Mr. Chairman and gentlemen of the committee, first, on page 462 of yesterday's record, just at the close of the hearing——

The CHAIRMAN (interposing). Before you proceed, Mr. Williams, I think I will have read here in the interest of Senator Nye, a telegram which has come to him, because you may want to make some remarks in reference to it. Mr. Richberg may wish to do so likewise.

I will request the clerk to read the telegram for the record.

The CLERK (reading):

OVERTON, TEX., *March 14, 1935.*

Senator GERALD P. NYE,
Senate Office Building:

We note from newspapers Mr. Richberg denies that either the Government or the dominant groups in industries wrote the various codes and that codes were usually presented by trade associations or code committees in which independent groups were represented. The Industrial Recovery Act, section 3, requires application to the President by one or more trade or industrial associations or groups for code wherein majority rules governed, and by "majority volume" was meant this absolutely placed control of both writing and administration of code in hands of the few integrated companies or, in other words, the only group in position to exercise monopolistic practices or oppression of smaller industries in violation of the Recovery Act. An investigation of the personnel of administrative committees and control of trade associations who wrote the oil code will clearly prove this assertion. Platts Oilgram, February 27, states: "The year 1934, the first full year of the oil industry under its code, witnessed a decline of approximately 20 percent in number of refineries operating in the United States

according to a survey now being completed. Incomplete figures are said to show that of the approximately 620 refineries operating December 31, 1933, about 120 were shut down or out of business a year later. These figures do not include any east Texas refineries that were not operating December 31, 1933, it is said.

"In other words, east Texas refineries, which started up and shut down again in 1934 were not counted."

Rule 4, article 5, of oil code prohibits sales below cost except, however, any person is permitted to meet competition in violation of this rule concerning which he has made complaint to the planning and coordination committee. We are of the opinion this rule has been flagrantly violated and in fact practically considered as not in the code. A provision of this sort, without making any exception and rigidly enforced, would have been of greatest protection to small nonintegrated companies but would have been quite an obstacle in way of monopoly. We do not think it possible to permanently secure object of Industrial Recovery Act as long as integrated companies are in existence and further feel an immediate equitable and competitive increase in wages all industries will be only way new markets can be created and unemployment decreased on sound basis. The only specific reference to the Recovery Act toward disintegration is in section 9 B authorizing the President to institute proceedings to divorce from any holding company such pipe-line company controlled by such holding company which pipe-line company by unfair practices or exorbitant rates in the transportation of petroleum or its products tends to create a monopoly. This would indicate to us that Congress at time this was incorporated in the act was of opinion pipe lines should be divorced or at least wanted a complete and thorough investigation. Has the oil administrator or any administrative committee satisfactorily complied with this, the only direct instruction of Congress.

We are preparing copies of miscellaneous letters sent out by this association which we think will be of interest to you and the Finance Committee and would appreciate collect wire from you addressed to this association, 1912 Fort Worth National Bank Building, Fort Worth, Tex., advising number of members of Finance Committee and if you would then be so kind would like to forward to you above-mentioned copies in sufficient number for each member of Finance Committee.

SOUTHWEST PETROLEUM ASSOCIATION,
H. B. MAY, *Secretary.*

Senator KING. Mr. Chairman, I want to read into the record a statement sent to me. [Reading:]

ILLINOIS MANUFACTURERS CALL ON ADMINISTRATION TO END CONTROL OF BUSINESS—RECOVERY DELAY CHARGED—RESOLUTION BACKED BY 3,000 CONCERNS HOLDS THE LAW UNSOUND AND IMPRACTICABLE

CHICAGO, March 12.—The board of directors of the Illinois Manufacturers Association today came out against extension of the N. I. R. A. "in any form" after the expiration of the present law on June 16. The board declared in a resolution that the law was "unsound in principle and impracticable in operation." The organization lists about 3,000 companies as members.

The resolution of the board reads:

"*Resolved*, That the board of directors of the Illinois Manufacturers Association records its conviction that the experience with the National Recovery Act, since its enactment in June 1933, has demonstrated that the measure is unsound in principle and impracticable in operation; that the board recommends to the member firms of the association that they oppose reenactment of the N. I. R. A. upon its expiration on June 16, 1935, in any form, and that a copy of this resolution be sent to each member firm."

Accompanying the resolution was a statement signed by R. E. Wantz, the president, which outlines the conclusions of the officers and directors as follows:

"1. That the increase in prices to the consumer, which has been caused by the N. I. R. A., is seriously retarding the demand for manufactured goods in domestic as well as in foreign markets.

"2. That the increase in the volume in production in the manufacturing industry that could reasonably have been expected during the last 12 months has been retarded by the N. I. R. A. to such an extent as to seriously delay the reemployment of industrial workers.

"3. That widespread uncertainty and apprehension, including that arising from the disturbance of harmonious employer-employee relationships, which have resulted from the N. I. R. A. have made the condition of the manufacturing industry generally appear so precarious that confidence in the future stability of this industry has been seriously impaired. Confidence is the most important requisite to recovery.

"4. That the entry of the Government into the complex field of commercial and employment relationships comprehended in the N. I. R. A. represents an impracticable and unwarranted intrusion into the proper field of private enterprise.

"Although immediate and temporary advantages may have resulted to some of our member firms through the N. I. R. A.," the statement adds, "we believe that the greater stability which would result from adoption by our Federal Government of these recommendations would ultimately provide more definite and more permanent benefits to all concerned."

Senator KING. I wanted to read into the record at this time a statement appearing in the report of the Federal Trade Commission with respect to the matter as to which I interrogated Mr. Richberg when he was on the stand. Unfortunately I do not seem to have it among my papers at the moment, therefore I will put it in later.

The CHAIRMAN. Very well. Now you proceed, Mr. Williams.

Mr. WILLIAMS. Mr. Chairman and gentlemen, with respect to the telegram which was just read into the record prior to Senator King's item, in the first place, the National Industrial Recovery Board is not the administrator of the Oil Code. The petroleum control is in an entirely different authority from the general codes; but, speaking to the question raised by that telegram upon the Petroleum Code, and raised otherwise upon codes generally, on this question of whether or not codes are proposed and administered by one type of unit in the industry as against another type, let me read into the record from the act a very short paragraph on the subject of who shall be considered appropriate for applying for codes. I read section 3 (a). [Reading.]

Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices.

I have read this only by way of observing that to me that would seem to be a perfectly reasonable provision as to who should apply for a code. It is true that all of these situations in the first instance have in them the possibility of a certain group in a certain industry which was already integrated into an association, getting further forward into code formulation and even into code administration matters than certain others of the industry. That is true. That was in the normal and natural situation which prevailed prior to the adoption of this law. That is the reason I deem that these safeguards in the form of findings by the President were written into this act.

The safeguards, if properly administered, would seem to offer the opportunity of providing against the kind of thing that is criticized in the telegram, as far as it is applicable to the codes generally.

The only point I want to make following Mr. Richberg's covering of that whole question in his testimony is to say again that if there is anything in any given instance, any abuse of that situation through

or by those who are forward in the industry councils, under this act we have the full power to be sure that that abuse is eliminated; so the question of the abuse is not so much a question of a fault in the structure of the act as it may be in the cases where it is proved there is an abuse, and failure of administration up to the time it is detected and applied, of the remedies against the kind of thing that is complained of.

Senator BARKLEY. Mr. Williams, I had in mind yesterday when I had to leave, a question that I wanted to ask you with reference to the matter of the cost of production and efficiency as gaged among different industries and different units in the same industry compared therewith. You know of course that the ambition of every town is ultimately to have a board of trade, and the ambition of every board of trade is to get a factory as soon as possible in the town, and they offer all sorts of inducements for the location of factories, including exemption from taxation for 5 years, frequently the furnishing of a site and the building of a structure, to induce desirable factories to come into the community. As a result of this, many units manufacturing various products have been located in small or average communities in which there has been no industrial background, and in which they draw their employees from the sons and daughters of the townspeople, and the country people around in the section. Naturally, not having been reared in an industrial atmosphere, and having no industrial background, they probably are not as efficient as men and women or young men and women of the same age in a section of the country or in a community which has had for a long time, for instance, an industrial development and a sort of industrial background and an hereditary efficiency growing out of that situation.

In considering the matter of efficiency and cost of production, is there any movement or any sentiment in N. R. A., to bring about such a leveling of the processes of production and the cost of production and wages and hours as to effect the elimination of these small factories in small communities where, in the very nature of things, there cannot be as great a production per employee as there would be in a community where for a hundred years there had been manufactured some product. What is your feeling with reference to that?

Mr. WILLIAMS. There is a school of thought that favors the elimination of differentials almost entirely as against different communities. There is another school of thought that is very highly resistant to that elimination upon the basis of any single element, such as geographical location or just a wage-rate basis or the hours. The policy of the N. R. A. has been to recognize differentials between various situations upon the basis of the efficiency of the workers and the difference in the living cost in the respective communities involved. There is an announced policy of N. R. A. to the effect that differentials may be recognized upon the basis of the difference in the living cost in one community as against another, and in the difference of the efficiency of the workers in one community as against another.

I subscribe to all of the premised facts that you laid down, Senator Barkley, and recognize it as a very pertinent part of this question of differentials, and, going forward from that, as a very pertinent part of this question of decentralization or centralization of industry, whichever way it happens to be working in a given case, my own thinking on it is that N. R. A. has never gotten to the perfect basis for

determining what differentials should exist between one community and another, the large against the small, for instance, the Northeast against the West, the North against the South.

I think the only fair way to do it in the end is to take into account all of the factors of advantage or disadvantage the competitor in one location has against a competitor in another location.

Senator BARKLEY. Of course we realize the fact that each of these communities, under the system which has existed, had a right to invite these factories into their midst, and the factory had a right to go, and in many cases, in most cases, the location of such an institution in a town has given employment to a large number of people who otherwise might have been idle. And I have in mind some communities where the existence of such an enterprise kept hundreds and thousands of people off of the relief roll. I would most certainly deplore anything on the part of the Government that would seek such a leveling process that these different situations, the cost of living, the background of the community with respect to manufacturing enterprise, and all of that, would not be taken into consideration in determining not only differentials for determining the question whether somebody was selling below what somebody else thought ought to be the cost of production, but the factors of the competition. Any other policy, it seems to me, would tend to destroy many local communities whose environment is wholesome, in which factories can exist on a profit to themselves and to the people. I recognize that the N. R. A. has adopted up to this time a policy of differentials, which I think is a wise policy, and I should deplore any effort to bring about such a Nation-wide standardization of conditions as would automatically put out of business many worthy small enterprises which have located in communities where they were wanted and where it was believed it would be to their advantage to locate.

Mr. WILLIAMS. I join you in that attitude, if you let me say as much.

Senator BARKLEY. For instance, we are all affected somewhat by local conditions. For many years it has been the policy of the Interstate Commerce Commission to draw an arbitrary line along the Ohio River for use in determining differentials in freight. For instance, we have to pay 35 cents a ton, and they are demanding a differential of 45 cents a ton to ship our coal from Kentucky anywhere north of the river. But nobody north of the river has to pay any differential at all to get across the river to come south, so that we are operating under an artificial and a natural barrier which was fixed by the Government, for which we are not responsible. That not only applies to coal, but it applies to many other articles of manufacture in the State, so that a factory on the north side of the Ohio River can come across the river into the southern territory without any freight differential at all, because a factory on the south side of the river, whose whistle can be heard by one on the north side, must pay a differential in order to get over into the territory of the factory across the river. It would certainly be most unfortunate if that could not be taken into consideration, and similar situations in other parts of the country taken into consideration in determining the cost of production, and of transportation and of marketing, as well as determining whether a competitive situation could exist under a level scale of wages that took no regard whatever of these artificial

differences that do exist, some of which have been imposed by the Government itself.

Mr. WILLIAMS. I agree with you, Senator, and if I may add one other illustration that shows the possibilities of the effect of the freight rate in this situation. Some 25 or 30 years ago, when a lot of us down South were trying to get out from under these arbitrary freight-rate structures, we had a stock example that was about this: There was an intermediate point in the South and a point further south, and a point up in the North, taken as three points, each of the outside areas being a manufacturing point, where the fact actually existed, with the consuming point right close to the southern point, that the manufacturer in the northern territory, by virtue of the freight rate, could deliver his stuff right under the eaves of the sellers close to the southern point at a less rate than that man could deliver it. Without going into detail there, I am in agreement with what you state, and let me add this general sentence in that territory, that I have not conceived it to be any part of the commission or the undertaking of N. R. A. to so apply the rules that it is trying to apply as to disturb any more than to a minimum necessary and desirable extent, the general business set-up and location and working conditions of the production areas in the country. That, as a generality, is my viewpoint with respect to it.

Senator BARKLEY. We all recognize that as between communities it is utterly impossible to arrive at what might be exact justice in every case, but it is reassuring to feel that there is no disposition and no trend in the N. R. A. to eliminate these local and geographical and industrial differences which have grown up under the system under which we have lived.

Mr. WILLIAMS. Saying it another way, except as some local situation may present flagrant conditions or violently destructive conditions or prospects such as make it necessary to apply something to relieve against some of the things that this act puts us under the burden of relieving against, I believe in as open and as free a competition as between communities for industries and operation and production and business enterprise generally as I do believe in the same kind of open and free competition between companies. We ought to interfere in my judgment only to the minimum extent necessary.

It is not a part of N. R. A., as I conceive it, to rebuild an economic or commercial structure in this country. It is to take a structure which we find here that has been built through the dozen or more of decades that it has been in the building, and apply such correctives as under this act we are permitted to apply to the improvement and not to the substitution or the unnecessary variation in the form of the system as we find it.

Senator BARKLEY. That answers my question. Of course, there would be exceptional cases which would have to stand on their own merits.

Senator GEORGE. As a matter of fact, the original act undertook to preserve the differentials, to get an express provision to that effect. At least, that was the interpretation given at the time the act was under consideration. I think that that principle has been lost sight of in certain instances. While there is a differential, it is a very negligible differential, and unquestionably the criticism of it is that a given community simply wants to maintain a low standard of living.

That is based purely upon theory and has not any foundation whatever in practical business experience, but the marketing cost of your finished product seems to me to be a test that ought to always be kept in mind in arriving at some sensible differential.

The CHAIRMAN. Mr. Williams, carrying out that same line of thought, in certain sections of the country they have established new textile industries. I know that complaint has come to me in my State that, say in the garment business or in the shirt business, it takes some time to train these girls who work there, and the people who work in that plant. They have never known anything but agriculture or some other line of work. During that training period and before they become proficient, is there in your opinion enough elasticity in the code requirements to permit them to pay a little less than the average code wage? It seems hard on a new industry, while they are training these people for the few weeks, that they should be required to have to pay them full wage.

Mr. WILLIAMS. I think there should be a sufficient elasticity to permit that situation to be taken care of. In the textile code there is such a provision, and without having the similar provisions of all codes in mind, it is a very common provision in codes generally that there shall be permitted a lower rate for apprentices.

The CHAIRMAN. Have they followed that in the administration of it?

Mr. WILLIAMS. Yes; that has been followed.

The CHAIRMAN. Without any exception?

Mr. WILLIAMS. I would not say without any exception, because I am not in the position, Mr. Chairman, to say that there is no code that does not contain it, but——

The CHAIRMAN (interposing). I am speaking particularly of the textile code. I am given to understand it would apply more in that than in other codes.

Mr. WILLIAMS. It is in the Textile Code definitely. Whether it is in there with a sufficiently wide margin or not is another thing.

Senator GERRY. Has not that been one of the things that has been abused and attempts at evasion in that, in the Textile Code?

Mr. WILLIAMS. I think that it is possible that probably there has been some abuse of it, but again that is a question of administration and not of fundamental defect in the provision, and I think the Senator will agree with me, and we are as dilligent as we can be to see if we can make the administration of those things, where there are abuses or found to have been abused, more effective in preventing those abuses.

Senator BARKLEY. I have in mind a factory in my own State which is the only factory of its kind south of the Ohio River anywhere in the United States. It operates under these conditions, to which I have referred in my question awhile ago. They asked for a reasonable differential. Every administrator and every deputy administrator and every subdeputy administrator opposed it, and they had to go finally up to General Johnson, who did grant the differential without which they would have had to close their factory and put 1,500 people out of work. That is a situation that would have worked a great hardship, and if it had not been for the fact that the administrator at the top of the ladder took the bull by the horns himself and overruled the recommendations of all of the deputies and the subdeputies,

the condition which I have described would have prevailed. Fortunately it did not prevail and does not now, but it seems to me that no technicality ought to be allowed to interfere with the fair dealing with an institution of that sort which has keen competition by large industrial units and which ventured out on a shoe string to locate a factory of that sort in my State, and I do not doubt that many others have had similar beginnings and have been able to build themselves up and provide a market and provide employment for 1,500 or 2,000 people, which in this current depression has been a godsend to the town and kept most of it off the relief roll.

Mr. WILLIAMS. Senator, without characterizing that particular situation to which you refer, let me use your remark to look administratively at that kind of a case, saying again that I am not assuming that your case falls under the offensive branch of what I am going to say. But say that that particular case would come to the administrator, his immediate inquiry would give you a look at our problem from our side of the fence, and his inquiry would be "Is this threat of destruction attributable to this differential or lack of differential or insufficiency of differential, or is it attributable to inefficiency of management or waste or something else that works to the net that that is an inefficient producing unit?"

If it develops that the wage was the sole cause of the trouble and that there ought to be a differential, that is the easy way in handling, because it is indicated as to what the causes of the need for the differential are, and the adjustment of the wage, and it can be worked out. That is one branch.

If you find that it is that, you can work it out, but on the other hand, sometimes, getting away from your case, in that exact situation we find that the reason that a unit like that is going to be put out of business does not lie in the wage so much as it lies in the inefficiency in other lines of activity.

Senator BARKLEY. Oh, yes; it may be inefficiency of management.

Mr. WILLIAMS. Presenting directly the question that I was talking about yesterday, that is the reason I revert to it now, the question of necessity in those cases of determining who you are going to appear for, whether the operator who is going to be put out of business if he is held to the wage, or whether on the other hand if you are going to appear for the worker and have the wage at the expense of putting the operator out of business.

There is a clear example of the way that thing comes up within our administration of the N. R. A. sometimes, and it is of course behind that bench from which we take our instruction as to which way we are to proceed.

Senator BAILEY. If you put the operator out, what happens to the workers?

Mr. WILLIAMS. That is the other angle of it. That is not the end of the picture, when you are speaking from a national point of view.

Senator BAILEY. The Government then borrows the money to feed the workers who are no longer working.

Mr. WILLIAMS. With one other element in the picture. When you put a group out of commission in one section of the country that are drawing 30 cents an hour and making a certain production, which production shifts to a group in another section of the country that are drawing 40 or 50 cents an hour, then viewed in the total of the

national results, you have transferred production from a low-paid basis to a high-paid basis, but at the same time have done two things—you have put the group, as Senator Bailey so accurately points out, who were first engaged in the operation, out of business. The second thing you have done is you may have raised, not necessarily, but you may have raised the cost of that product to the consumer, and in so doing may have shortened the volume of consumption, which will shorten the volume of production, which will shorten the volume of employment again.

Senator KING. And tend to monopolistic control.

Mr. WILLIAMS. Tending to concentration at least, Senator King.

Senator KING. You differentiate between the words "concentration" and "monopolistic control", do you?

Mr. WILLIAMS. Yes; I think a fair differentiation can be made there. I think there are certain concentrations of volume that are entirely clear of monopolistic characteristics in the objectionable sense that we use that phrase.

Senator HASTINGS. Mr. Williams, if the N. R. A. were to work perfectly, would it not necessitate putting out of business a lot of people who are not capable of the best management? Would not the result be to limit the business of this country to those that are capable to efficiently manage it and put out of business all of those of mediocre ability?

Mr. WILLIAMS. That is very close to the thing that I was pointing to yesterday, Senator, when I said that it is apparent that you gentlemen on that bench and in Congress, it is for you to check on that very question that you are talking about, because there is not any such thing of course as looking out for the wage of the workers to a given extent that we can restore, and at the same time looking out for the interest of the operating unit that will be put out of business if he has to pay that particular wage. You can serve one end of that thing or you can serve the other end of it, but you cannot serve both. You cannot make the X Manufacturing Co. pay a 50-cent wage in the interest of the worker, and save the X Manufacturing Co. as a producing unit if it cannot live under the 50-cent wage. The reason it cannot live may be attributable to inefficiencies in other departments of its operation; but if it is a fact, no matter to what it is attributable, or no matter what it is traceable to, then it is for the Congress to check or for the administration, if the power be given to it to make the election, as to which of the two things it is going to serve. It cannot serve both. I hope I have answered your question.

Senator HASTINGS. You have made more emphatic in my mind the difficulty of working out any plan that does not eliminate the fellow with mediocre ability. It seems to me that if a man has saved a few thousand dollars and wants to go into a new community and start a business that he is familiar with, and thinks he can make a success of, and begins to pick up a lot of people there who have not heretofore had any employment at all and gets them to agree to work for him at a lower wage than is being paid in that industry by the successful man, it seems to me that it is not good Americanship to say to him, "You cannot run this business unless you pay so much wage," and he replies, "Well, I have not as much skill nor as much money as some other man, and therefore I cannot make my plant as efficient as the other, but won't you permit me as an American, born in America

and worked hard all my life and saved a few dollars, won't you permit me to go on here and do the best I can, make a little money for myself, bringing some money for my community, won't you try to prevent the Congress from passing any law if it is within their power"—and he has been led to believe all the time that the Constitution gave him some freedom and therefore the Congress did not have that authority to stop him, and I can see that fellow begging people to let him alone and let him do the best he can for himself and that community, and I doubt very much whether we are making any progress in America when we undertake to interfere with that sort of a situation, regardless of whether he is paying what has been termed a living wage or whether he is not. It is the freedom that I think the fellow is entitled to, and I do not think that Congress ought to interfere with that fellow, particularly if he has located in some State and doing business in that State selling his goods in that State.

Mr. WILLIAMS. You have your finger on one of the fundamental problems that we are continuously up against. Let me say——

Senator HASTINGS (interposing). We just cannot do it, as I see it.

Mr. WILLIAMS. Up to this point our policy has been to work in the direction of sustaining the minimum wage, and appearing for the social interests involved, but I am not unaware of the fact that in the statement the Senator makes there is a real picture of a problem in this N. R. A. administration.

Senator HASTINGS. My recollection is that Senator Barkley told me of that situation of his probably a year ago, just about the time they were about to close that factory, and I thought, "What a miserable thing that is" and my recollection is that a group of people from Kentucky were here and they were going that particular day, and I was telling that to some person later, engaged in this same business, and they were just as mad as the devil because some concession was to be made to that Kentucky concern, and they said it was all bunk, it was just an opportunity to permit them to sell their goods lower than was being sold by the industry generally. I do not mean to say he was correct about it—I am just telling what he said. The same trouble, I imagine, that was brought to your department would come from that other group saying that this was unfair; telling that to your deputy administrator. General Johnson, who was the boss of everything, just said, "It has got to be done." That was the end of it.

Senator BARKLEY. I do not want to leave the impression that I think that anybody ought to be permitted to take advantage of a monopoly of employment in any new section of the country or in a community where they go in order to drive down wages generally in the country or to drive down the price of any product that is produced by a varied group of industries or in various locations in the same industry. What I had my mind on particularly was these natural differences produced largely by nature, which cannot be overcome by any artificial process. For instance, getting back to coal, there are certain coal fields in the country that have for instance a vein of 10 feet of thickness which can be mechanized, and in those coal mines there is a possibility of mechanization, undoubtedly coal can be produced at a cheaper rate per man per day then it can in a section where the vein is only 5 feet and cannot be mechanized and

must be dug by hand, by pick and by the ordinary processes of hand labor.

The question occurs, naturally, and I am sure that the N. R. A. has to deal with it, whether nature having put that coal in its situation in the different sections of the country, whether it will undertake to strike a dead level based upon the possibility of mining in the large field of the higher efficiency brought about by the possibility of mechanization, to such an extent that that other coal field which cannot be mechanized must quit and leave its coal in the mine.

Fortunately the N. R. A. has taken the position so far that those natural barriers and handicaps and differences are to be recognized in fixing differentials, and I think they have gone a long way along that line. It was difficult, more difficult than it ought to have been at the beginning, to convince them that that ought to be done, but they have had it to a very large extent and tried to equalize as much as possible without giving preference to anybody who deliberately puts down wages, and for him I have no sympathy. N. R. A., I think, has made an effort to bring about a situation that would enable anybody who is in good faith doing the best he can to go ahead and operate, and I hope that that policy will be continued.

Senator KING. I wish that the suggestion made by my friend were entirely accurate so far as the N. R. A. is concerned. Apropos of what has just been stated, I have received many letters, one of which I got 2 or 3 days ago, and I want to call attention to some of the provisions because they are germane to the investigation now being made. This man suggests that if the code is to be continued, and he is opposed to it, there should be an amendment that it should be unlawful for any code authority to make or levy an assessment against any business whatsoever. The code authority in the business in which he is engaged, and he has 30 or 40 employees in my State, is, for instance, drawing a salary of $20,000 per year. These exorbitant salaries will soon seem to the general public to be in a class with railroad executive salaries, and will do a great deal to injure the party at the next election, he writes. I might add that this man is a Democrat.

He says further:

> Two days ago we had a visit from the code authority from New York in order for us to follow the adherence to the code as interpreted, and it would be necessary to raise the price of our merchandise produced to such an extent that the consumer will not buy. If the New York Code Authority insists that I follow out the recommendations of the investigator, it will mean the closing of the factory, part of my business, and an enlargement of the jobbing end.

That is, they will become a jobber for eastern firms instead of producing it there at home and furnishing work.

He states further:

> With the number of people out of work in Utah, I of course hesitate to add to the unemployment, but of course the 30 people which will be out of work will not greatly affect the country as a whole. I am anxiously awaiting a report from the code authority in New York to see whether it will be possible for me to operate, but the uncertainty of my continuing business is detrimental both to the people who work for me and for myself.
>
> I have the same report from other factories located in Salt Lake City. The rules and regulations of the code as written was for the manufacturers of the metropolitan center, who seem to me to have a definite object in view, and that is to concentrate the business in the large centers. The outlying manufacturer has never had a voice in the writing of the codes. Even if we were to be asked

our opinion, it would amount to nothing for the reason that 95 percent of the manufactured product is in the large centers, so we really have no where to turn but to the Federal Congress. Unless our Representatives in Congress sense our predicament and insist on our protection.

Many letters of this kind, Mr. Williams, come to Senators. I know I have many—all indicating the destruction of legitimate business. This man has been in business for a number of years, and may I say with respect to a number of the businesses, it is certain that they are concentrating them in the industrial centers, and if I may add if this is not germane, Mr. Stalin seems to have more sense than some of us. He is doing all that he can to decentralize business and take it out into the Ukraine and into "White Russia", so-called, and down into the Caucasus and the southern part of Russia, so as to diffuse it and not concentrate it, and give it to the men like those referred to by Senator Hastings, the man who lives in the rural district, in addition to the agricultural part of their work, to give a part of their time to the manufacturing business. We are not pursuing that course; we are concentrating, it seems to me, through the destruction of competition and the centralization of industry and the repeal of the Sherman Antitrust Law and the other laws, the manufacturing business and the business generally, in the hands of the few.

But I want to ask you if this is an accurate statement. I understood Mr. Johnson to state in his article in one of the current papers that the codes could not survive if the antitrust laws were in force, that they were incompatible; that is to say, that the codes had to have the right to repeal the antitrust laws and to go as you please, so to speak, and produce monopoly, or they could not survive.

Mr. WILLIAMS. I would not say it in as broad terms as your question was posed in, but I think it is a true statement that except as the antitrust laws can be not wholly suspended and taken out of the way but modified or suspended to that minimum extent necessary to permit the doing of things necessary to make it possible to accomplish the things that we are attempting to accomplish——

Senator KING (interposing). That is, to combine.

Mr. WILLIAMS. I would not say to combine, but to work together cooperatively and safely while cooperating to the accomplishment of these ends. Except as that is done, I think it is probably true that the codes would not survive.

Senator KING. One further question. And as indicated by Senator Black the other day in his very pertinent questions, if you attempt that without the restriction of the antitrust laws, you have to have more agents than they had in trying to enforce the Eighteenth amendment and the Volstead Act to look after every employer, examine their books, and so on, in order to accomplish the ends which you have in view, or rather which were suggested as possible.

Mr. WILLIAMS. We have got this situation if you may interpret the antitrust laws as forbidding business men in an industry to get together for any purpose. It does not theoretically—it actually all but does, because there are few business men who are willing to take the chances of getting together in industry groups except in open trade associations. If we may take the antitrust law as something approaching that, if I may compromise on the phrase with you in that form, Senator King, and then on the other hand may take the N. R. A. as requiring business men or necessitating that business men get together for

certain purposes, then that certainly results in an inconsistency as between the two.

The CHAIRMAN. Do you not believe that we could write into the law that the antitrust law is not suspended except for certain purposes?

Mr. WILLIAMS. Naming the purposes therein?

The CHAIRMAN. Do you understand my question?

Mr. WILLIAMS. I understand your question now; I thought I did not. I would not attempt to pass on the question of legislative draftsmanship or the advisibility of the form of legislation, but that is approximately what this law as I understand it intended to do, to say that it should not be suspended except so far as necessary to enable us to work to the purposes that are designed here. That has a vagueness and an indefiniteness——

The CHAIRMAN (interposing). I wonder if we could not be more specific than in the present law, because that leaves it very general.

Mr. WILLIAMS. We run into difficulties as we become more specific. Among other difficulties, there is the exclusion by failure of inclusion, and other things that present difficulties.

Senator CONNALLY. Mr. Williams, is it not true that most of the industrial enterprises began as little enterprises?

Mr. WILLIAMS. That is true.

Senator KING. Such as your big one?

Mr. WILLIAMS. All the big were once little, and all the high earners were once low earners.

Senator CONNALLY. The point I am trying to bring out is that they started those small enterprises because of some natural or supposed differential that they thought that they could begin and compete with somebody already in the business.

Mr. WILLIAMS. I do not think necessarily, Senator Connally, if I may take issue with you there, that they all started by virtue of some differential favoring them. They started under as favorable conditions as they were in position to take advantage of in starting.

Senator CONNALLY. They would not have started unless the man who started thought that he saw a chance for himself to make a success of the industry.

Mr. WILLIAMS. The only point where I am holding out on you a little bit is, that a great many people have started in business on the basis of a sheer faith of being able to succeed in that business, without the advantage of a differential favoring them.

Senator CONNALLY. That may be, but they may have thought they had a differential in efficiency or management that made them take that course and take the hazards of launching out on this new enterprise. If the N. R. A. seeks to standardize everything and destroy whatever natural advantages one locality might have, either as to nearness to fuel or nearness to the raw products or water transportation, or even labor conditions, where the labor can live more cheaply, or the climate is more satisfactory, "if you undertake to destroy all of those do you not destroy that very urge to start in an industry and to diffuse industry over the country?

Mr. WILLIAMS. It is a possibility that you may make it impossible for some things to be launched in communities on the basis on which some have been launched.

Senator CONNALLY. Is it not a desirable economic business set-up to have a diffused industry where it is possible, in other words, to

balance the industry over the country as nearly as possible so that you do not have one section entirely devoted to one thing, so that when there comes a slump, you have a great business and financial dislocation? Is not that the modern trend right now, away from this concentration? We have had the era of consolidation in great industrial centers. Is not the best thought in the country tending to get away from that, and isn't that the reason why textiles, for instance, have gone to the South in large measure?

Mr. WILLIAMS. There is quite a support for and quite some movement in the direction of that idea that you refer to.

Senator HASTINGS. Senator Connally, I do not want to interrupt you, but is it not true that you cannot start a new business now without the consent of the N. R. A. authorities?

Mr. WILLIAMS. Mr. Chairman, I think if I could take 3 or 4 minutes——

The CHAIRMAN (interposing). The chairman is in favor of your taking 3 or 4 minutes. [Laughter.]

Mr. WILLIAMS. Thank you. I should like to take a few minutes to make a general statement apropos of the questions that Senator Hastings posed here a bit ago, and at the same time having reference to Senator King's and Senator Barkley's and Senator Connally's questions, as well as Senator Bailey's. I think we can probably move on a little bit faster. You gentlemen are looking at our tree from some distance away and you are seeing some tangled masses of branches.

Senator KING. I think some of us have been up against the trunk, just as you have.

Mr. WILLIAMS. I do not mean to criticize your approach; I am only trying to illustrate what I am trying to say.

I want to go back to the administrative position and look down two or three of these limbs which I think will serve to clarify a little of the atmosphere. Starting with the territory in which Senator Hastings' questions lay, one of the problems presented there is whether or not you are going to let a few units in an industry break down the whole industry. There are two questions presented there, and that is the first one.

The first one we meet, if we are going to recognize the right anywhere to operate on any basis that he wants to, and let me narrow it now to the wage rate and the hour limitation to get it in definite terms, if we are going to let anybody anywhere operate on the basis that he wants to or below certain fixed minimums applicable to everybody, it does not make any difference that there may be a very small percentage doing that, if there be that small percentage—because I have never seen any way to justify taking 100 men who are competing with each other, fighting if you please, each with his knife out for the other, and having the Government go in and tie 99 of them each to a tree and leave the other one running around loose with his knife out.

That is the net of what we come to when we begin to attempt to enforce minimum standards of any kind upon any industry. In a word, this: If government is going to touch any, it seems in fairness that government must sustain its touch upon all in order to have the semblance of being fair.

From the administrative point of view, I am saying, recognizing all that Senator Hastings has recited as historical facts, and as of

ever-present importance in this situation, that again you gentlemen of the Congress are confronted with the necessity of making a decision of which end of the thing you are going to serve.

Senator BAILEY. If we take the course that seems to be applied here of taking charge of business and regulating it by codes and preventing new businesses, all under government supervision, then why have we not converted this Government into a corporative state? Does not the whole question go to the character of the government?

Mr. WILLIAMS. It can go to the character of the government very easily, which is a line that I am trying to sustain in my testimony.

Senator BAILEY. I do not see how we could proceed in that way without utterly converting the character of the American Government. Why wouldn't we have to change the Constitution and the whole conception of the function of our Government——

Senator KING (interposing). Wipe out the States.

Senator BAILEY (continuing). With the United States as a republic?

Mr. WILLIAMS. Senator, I think I would agree with you if this covers what you are talking about—I would agree with you in principle what you are talking about—but I am saying that there is no necessity for our going to that length.

Senator BAILEY. Let me get the thought in your mind. While there may be no necessity, if you plant the seed, the wheat will come up.

Senator KING. And the weeds.

Senator BARKLEY. That is what the thrasher has to do, to separate the wheat from the weed.

Senator BAILEY. As I said, we would have to elect between the small or as you might say the subnormal industries, and the big ones? We would have to make an election which end we would take.

Mr. WILLIAMS. I am saying that there are inconsistent angles of this thing on which elections are necessary on the part of the Congress as to which end they are going to serve in the absence of the ability to serve both at the same time.

Senator BAILEY. Is it not a fact that if it is a question of what Congress will do, that Congress will take the side of what we call the "small business"?

Mr. WILLIAMS. As the N. R. A. has tried to do, to take that side if we were taking either side. We tried to hold an even balance, but we especially tried to hold it even when looking at the smaller.

Senator BAILEY. That is the less efficient; the smaller is less efficient than the big business, isn't it?

Mr. WILLIAMS. Not always.

Senator BAILEY. Generally speaking?

Mr. WILLIAMS. Without statistical studies to support me, I would have to say, Senator, that I believe there are many little businesses that are more efficient than many big businesses, as there are many big businesses in another group that are more efficient than many small businesses. I do not think efficiency goes with size all the time.

Senator BAILEY. Not altogether.

Senator KING. I can verify that.

Mr. WILLIAMS. If I were guessing, I think I would say that probably there is more efficiency in the large than in the small, because efficiency is one of the elements of growth, and it would probably work back that way.

Senator KING. You have demonstrated that in the cigarette business, haven't you, Mr. Williams?

Mr. WILLIAMS. I would hope that efficiency was an element of that development.

Senator BAILEY. That was a superior quality, wasn't it? [Laughter.]

Senator KING. Of tobacco or management?

Mr. WILLIAMS. Of the tobaccos grown in Kentucky and North Carolina.

Senator BARKLEY. The quality of the tobaccos that we sell to you.

Mr. WILLIAMS. From North Carolina, South Carolina, Georgia, and Kentucky. [Laughter.]

Mr. WILLIAMS. If I may go into an observation opening territory into which Senator Bailey has led, I have said that there was a possibility of carrying a thing like this far enough so that you would approach some of the results that he is talking about.

Let me illustrate. If the Congress were to take the position that all of business is affected with a public interest, and working forward from that position were to get sustained by the court a contention for authority in the Federal Government to regulate all of business because all of business was affected with a public interest and therefore thrown under Federal controls, we would be approaching the thing to which Senator Bailey refers. My answer to that is that while admitting that that might be a possibility, as a method of operation there is no necessity; in other words, we may serve the purposes that are committed to us for service under this emergency and under this act without going anything like so far as is indicated by that statement.

Senator BAILEY. Then you have the task of trying to hold a half-way ground between what we may call the "old system"——

Mr. WILLIAMS (interposing). I do not think of it in terms of a half-way ground even. I think of it in terms of going forward to that minimum degree necessary to serve the valuable social purposes that are given to us under this act to serve, and when you begin to speak of the present today, instead of being half way——

Senator BAILEY (interposing). I agree perfectly that could be done by Mr. Mussolini or Mr. Stalin. They are dictatorships. I agree that it could be done by General Johnson when he had a tremendous public enthusiasm to support the "Blue Eagle," but I agree further that that period is past and we are here in a Government that is in the nature of a democracy, really a republic. Can you do that in a republic?

Mr. WILLIAMS. I think you can do enough of it to make a definite improvement in the working conditions of certain groups of people in this country without encountering to a dangerous degree the dangers to which you refer, but I am speaking of movements in minimum extents for the purpose of serving those ends, and I am not speaking of things that go forward into Government getting into business to any greater extent than is necessary to enable them to serve those purposes. I do not believe in tearing a house down just because you want to patch a leak in the roof.

Senator BAILEY. The Congress would be the judge.

Mr. WILLIAMS. That is what I am trying to say when I am saying that there are some elections that must be made by you behind that

bench and in the Congress and we in the Administration are only wanting to know what elections the Congress makes, and we will follow along those lines, of course, as we have tried to follow along the lines of the present act.

Senator BAILEY. They make their elections according to how they are elected.

Mr. WILLIAMS. I believe that is leading to politics. [Laughter.]

Senator BARKLEY. Does not a good deal of this resolve itself into a question of degree? All of these advances in the effort to regulate social conditions is a matter of degree of approach and of advancement. The very anti-trust law itself was an invasion of that field by the Federal Government. Of course it only purported to relate to interstate commerce, but the enactment of an antitrust law saying that a man engaged in interstate commerce can do or cannot do certain things in the pursuit of his business, is an invasion and a proper invasion as I see it of the field of business, in an effort to bring about a condition of fairness and equality among all business men in the country, and in view of the suggestion made here already by Mr. Richberg, with which I assume you agree, that from now on we shall deal only with interstate commerce or with such commerce as affects interstate commerce, brings it rather back within the restricted field attempted to be covered by the antitrust law in the beginning. Is that true?

Mr. WILLIAMS. Senator, it is true in terms. Whether in application it is entirely true or not, it is hard to say for the reason that this thing of in or affecting interstate commerce is subject to more interpretations than the moon is to phases.

In the thinking of a great many of us—I want to get myself out of the classification so I will say that in the thinking of a great many people—things in or affecting interstate commerce suggested the idea of those things that up to this time upon the face of the record of the Supreme Court stand as adjudged within that descriptive term.

In the thinking of others, things in or affecting interstate commerce include every business activity in this country almost even down to the extreme case where it is contended that the wage paid to a bootblack in a little town in Kentucky has its relationship to interstate commerce for the reason that if you pay him $6 a week instead of $10 a week, by withholding that $4 from him you have impaired his capacity to buy things that might have moved in interstate commerce and that he might have bought.

I am not trying to be ridiculous, Senator, but I am indicating the extremes to which the contentions on the phrase, "in or affecting interstate commerce" may go. It is difficult to talk of that without putting that much in. It is a question of where we are going to land on the question of "in or affecting interstate commerce." It is a possibility, it is in contemplation that it might include everything.

Senator BARKLEY. It is impossible to draw a straight line and say that everything on the right is either interstate commerce or something that affects interstate commerce, and everything on the left is not.

Mr. WILLIAMS. And that body of the law is a progressive moving vital body of the law which is leading forward to new recognitions and new acceptances each year.

Senator BARKLEY. But from the standpoint of the law and the Constitution that made no difference in its language and in its conception by the framers, as I understand it, between actual commerce

itself and the agencies through which or by which commerce is transported, it is not difficult if the Supreme Court would sustain an act of Congress dealing with intrastate transportation of cars as it might affect interstate transportation of commerce, it is not difficult to assume that the court might sustain some act of Congress dealing with the commerce itself which is transported as well as the thing over which it is transported as affecting interstate commerce.

Senator HASTINGS. Of course, Senator Barkley, if you go as far as Mr. Richberg with respect to interstate commerce you have left out very little. I asked the specific question whether or not he would consider a retail grocer and a retail druggist engaged in interstate commerce. I assumed that he would promptly say that they were not engaged in interstate commerce, but he did not say that. He called attention to the chain store, and I asked him to leave those out, and then he immediately replied that the other retail stores are in competition with them, indicating to my mind that Mr. Richberg had reached the conclusion when he talked about this act covering interstate commerce, that it covers pretty nearly everything. I think the exception he made was the fellow who pressed a pair of pants for somebody that lived around the corner, and he made some exceptions in that business too, because he said they were having the pants pressed in the other States and shipped back and forth, so that he did not even exclude them 100 percent. So I have reached the conclusion that from Mr. Richberg's point of view, there is practically no limit to this interstate commerce, and you can do just exactly what Mr. Williams says, if you had the right to do, as he puts it, of the controlling of all of the business, because if you declare it had a public interest, you could control it all. Mr. Richberg is not far from that, if I recall his testimony.

Senator BARKLEY. I do not recall what his testimony was on that subject, and I am not disagreeing with your interpretation of it therefore, but the Supreme Court has practically by its decision in sustaining the Transportation Act, put intrastate railroads out of business so far as independent regulation is concerned. I mean by that, if they have any connection with an interstate carrier or if their business originating over a short line by an intrastate route is to continue over an interstate route, it is practically possible under the law now and under the decisions to regulate that in certain phases or certain regards.

Senator HASTINGS. You could prepare a brief a hundred pages long sustaining Mr. Richberg's contention.

Senator BARKLEY. I am not passing on the contention because I was not here when he animadverted with respect to that according to your interpretation, but I think it is impossible for Congress to draw a distinction between a power to regulate interstate commerce and the agency over which it is transported, because the Constitution makes no division between them.

Mr. RICHBERG. May I make a statement, Mr. Chairman?

The CHAIRMAN. I might say that Mr. Richberg has requested this morning that he present for the record some time, if possible today, some phases of the legal proposition in writing, and he will supply a copy for each member of the committee.

Was there some further statement you wanted to make?

Mr. RICHBERG. In doing that, if the opportunity afforded, I would like to summarize what the views are that I think are sustained, not

by my personal opinion, but which have been sustained by the Supreme Court.

Senator HASTINGS. I prefer Mr. Richberg to make a statement now in view of the statements that he has made.

Mr. WILLIAMS. Very well. I still wanted to answer Senator Hastings' question to the extent of breaking it down and posing the various elements of it. I am not through with that yet.

Senator KING. Mr. Chairman, I wanted to, and some of the other Senators wanted to interrogate Mr. Richberg before the hearing closed. Wouldn't it be just as convenient for you to make your statement at that time?

Mr. RICHBERG. At any time.

Senator KING. Let us proceed then with Mr. Williams.

The CHAIRMAN. Mr. Richberg, do you want to present that statement to the committee now?

Mr. RICHBERG. At any time.

The CHAIRMAN. Very well, Mr. Williams; will you proceed where you left off yesterday. [Laughter.]

Mr. WILLIAMS. If I may delay to ask if you understood my suggestion to mean a resistance to Mr. Richberg coming on now. It was not.

The CHAIRMAN. We understand that thoroughly.

Senator KING. We know that there is too much harmony there for you to resist.

The CHAIRMAN. Proceed to make your statement, because we only have a few more minutes.

Mr. WILLIAMS. Senator Hastings has made a very incisive statement as to one phase of a situation that is presented as one of the big problems, and always has been one of the big problems of N. R. A. I want to develop just what is involved on the other side of that thing.

I start out with the admission that he has raised a difficult question and a question that leads into far-reaching territory in a great many effects from the one policy or the other. I do not want to determine the question nor recommend the determination of it; I only want to propose it.

I have only gotten thus far and no further, that whenever you decide on the application, we will say of 90 percent, to fix a figure, of an industry to adopt a code provision establishing certain conditions which I had limited for the purposes of this statement of this question to wage minimums and hourly maximums, whenever you have done that on the application of 90 percent of an industry, and there is another 10 percent that is holding out on the 90 percent for one reason or another, let us assume some reasons, some of the various reasons that that 10 percent have. One of them is that they are living on a lower wage than that prescribed in the code, and they know that if they were to move up to that, it would impair their return very much or even possibly put them out of business. Others in that 10 percent may be inefficient in other departments of the management of their business to the extent that they may have to go out of business on account of that, coupled with the paying of the higher wage; in other words, the group that is covering its inefficiency in the one line by taking it out of labor on the other side.

That is not presented as all-inclusive of the cases or of the questions, but it is presented as illustrative of the question that is presented.

When we get that situation, we note that in order to sustain a code against that 90 percent we have also got to sustain it against that 10

percent, for the reason, as I say, that the Government cannot be fair when it ties 10 men with their knives to a tree and turns another one loose to run around and operate on the 9 that are hopelessly and helplessly tied meanwhile. That is my way of saying that compliance, the enforcement of compliance, is absolutely necessary throughout an industry in order to be fair in maintaining a code in industry.

Now, what is the stake? On the one side the question of whether you are going to maintain the wages and limit the hours in order to serve these social benefits that we are talking about on the side for the working man.

What is the stake on the other side? All of this territory into which Senator Hastings has led is that stake on the other side—whether or not a man would have had to be put out of business in the pursuit of the general good because he is not able to operate his business as efficiently as another man or as the great mass of the operators in his industry. Whether or not he is to be put out of business because, whatever the causes may be, he cannot pay the wage that has come to be regarded as the minimum proper wage in that industry.

That is the question that is presented there, and that is where I say again that the Congress has to decide, or if it leaves it to us in the Administration to make the determination, we have to decide which of the two things we are going to serve.

We have either got to go forward and enforce that code upon that 10 percent that it may be going to destroy, or we have got to let the code break down on that side of the question. I really did not say that very well; we have either got to enforce the wage all the way through for the benefit of the social purposes involved and destroy these units that fall under the description I am talking about, or if we are determined to avoid the destruction of the inefficient unit or the unit that for any other reason cannot meet these requirements without meeting its own destruction, then we have got to abandon this question of serving the social purposes that are at stake on the other side.

Senator BAILEY. Is not that precisely what the trusts and monopolies have always done—destroyed the smaller businesses?

Mr. WILLIAMS. There is one fundamental difference, as I think everybody behind the bench would agree with me on, in that territory. If it be true that the trusts, and I am not saying "yes" or "no" to that question, that they did aspire to do that very thing, the difference would lie in the fact that they were doing it in the service of a private and selfish interest, whereas you of the Congress and we of the N. R. A. in attempting to do the same thing are at least thinking that we are doing it in pursuit of a public interest and in disregard to some extent of private interests which if in your philosophy must be sacrificed to the public interest, the answer lies one way. If in your philosophy it does not lie that way, then we can have the other way.

Senator KING. Suppose the 10 percent are more efficient than the 90 percent who are integrated and who get together these various devices and devious ways and determine to enforce their views, inefficient though they may be, on the 10 percent that are efficient. Are you going to destroy the 10 percent because they do not conform to the inefficient and plutocratic move of the 90 percent?

Mr. WILLIAMS. I cannot conceive of the case that I stated arising in a situation where the 10 percent were the efficient ones, but if you mean by that to raise the question of whether or not the code should be imposed on a majority, then that leads into a different territory, as I got your question.

Senator KING. I think I can give instances where 10 percent or 15 percent, or much less than the majority, were more efficient than the majority, and yet if you are going to permit the majority to rule, then, of course, you destroy our concepts of government.

Mr. WILLIAMS. I think you are speaking in trade-practice territory when you ask that question.

Senator KING. In industry generally.

Mr. WILLIAMS. Let me refer to trade practices. If that be where the question leads, of course, there must be most careful scrutiny toward practice provisions set up by a majority in any industry on the question of what their possible effect may be upon the minority, and in my own opinion, trade-practice provisions in addition to having that careful scrutiny even when they meet this classification, would have very largely to be held to the classification of things that are definitely unfair, dishonest, and destructive of fair conditions.

Senator KING. Let me give an illustration of what I meant. I have in mind now the situation when they developed a certain method of treating very low-grade ores. They discovered a method under which they could extract metals very, very cheaply, the result of which was that one mill was able to perform the work of a dozen, and that process finally eliminated 80 or 90 percent of the mills engaged in that character of work. Would you now say that the 80 or 90 percent of the mills and plants because they did not have that efficient and up-to-date method, scientific or otherwise, were to control and destroy the other 10 percent and compel them to charge the same rates for handling the ore and treating the ore that the 80 or 90 percent did?

Mr. WILLIAMS. I do not think you can justify that, but I can differentiate your case from the N. R. A. case, in that if you are talking about a patented process, there are certain factors that come into that situation through the ownership of a patented process that N. R. A. cannot control in any way, as Mr. Richberg said the other day. It is entirely independent of that.

Senator KING. Your philosophy comes to this point, does it not, that the majority in the trade may superimpose its principle on the minority, and if you carry out that philosophy, this Republic would cease to be a republic and the minorities would be destroyed, whether politically or economically.

Mr. WILLIAMS. I did not say it that way. I say that the Congress or the administration has got to decide whether or not it is willing to take certain hurdles if it is going into certain directions because there are hurdles across all of these roads, as we all may know, but if I may stick one minute to one phase of that question that you referred to, which is akin to a comment of yours the other day—and I am diverting now from Senator Hastings, but we will come back to that—I want to put this into this record, because I think it has been misconceived.

I am not speaking of a process which usually does not originate under circumstances which involve large expenditures of money, but I am talking about mechanizations and improvements connected with

machines. I am talking about the territory referred to sometimes under the broad term as technology, on which I think there has been quite some misconception from this angle.

You asked me the question the other day as to whether or not I was against those developments that made faster production easier and cheap and efficient at the expense of eliminating employees. Approximately that; I am not quoting you exactly; and it is that to which I am addressing myself.

There is a continuous improvement in producing machines going on in this country. There has been a great deal of clamor about manufacturers putting in the more effective machines, and thereby eliminating some of the employment, and there has been quite a howl against it, and a lot of us have resisted doing it upon that basis.

Senator GORE. Resist doing what?

Mr. WILLIAMS. Putting in the faster, the more efficient, more nearly automatic machine as against possibly the slower machine, the machine that requires more man labor to get the same production.

Senator GORE. You say you have resisted that?

Mr. WILLIAMS. Some of us under the appeal for not doing anything that would lose any employment for anybody, have resisted or deferred it.

Senator BARKLEY. Do you mean by that that industry has resisted it? You do not mean the N. R. A. has resisted it?

Mr. WILLIAMS. No.

Senator BARKLEY. You are speaking of industry?

Mr. WILLIAMS. Yes; I am glad you cleared me on that. I am out in the manufacturing territory now; back home.

Senator GORE. There was a point in the past where that would not have been a wise policy.

Mr. WILLIAMS. I am raising what to me is a very serious question as to whether it is ever a wise policy, and I want to develop the other end of it. If there is a net loss in employment in doing it at a time like this, where there is so much premium in increase of employment instead of decrease of employment, then I think those of us who have followed that possibility of desisting in industry from going forward to that kind of thing were right. I have very serious question as to whether we were right or not for this reason, and this is the specific point that I want to bring out. There is, as we are saying in this preliminary statement, a high value and premium on getting as much employment into this immediate depressed situation as we possibly can get in there.

Take a specific illustration. Let me go to a street car, that I do not know anything about, saying that possibly my illustration is not in line with the facts of the street car cost, and business, and operation, nevertheless it illustrates it. Take the two-man street car. Somebody builds a street car that can be operated by one man. Without knowing that business, this situation is presented in similar instances in which all of us have sat and had to make decisions.

You have got a labor pay roll of 2 men on 1 car; you have a certain investment in the car. Here comes a car that can be operated by 1 man involving the opportunity of losing, in N. R. A. terms, 1 employee, and in manufacturers' terms, dispensing with 1 man's pay from the pay roll.

Tested by the immediate locale, there is a loss of employment, but what I want to direct your attention to is what happens elsewhere,

and we are speaking from a national point of view in a national employment situation. An operator looking at the situation presented by that opportunity makes about this calculation, without claiming that the figures are accurate. He says "I can save the wage of one man each day if I will make an investment in one of these new cars." Let us say the wage is $5 a day or $1,500 a year. He says, "The new car will cost me $7,500. It will take me 5 years to get my money back. By making now an investment of the $1,500 a year which I saved for 5 years I can buy that car and have my money back at the end of 5 years." The point is that if he goes forward and does that, he has immediately provided a market for a $7,500 item of commerce in which the labor cost may be 40 percent and it may be 50 percent, and may be more. I am not trying to place the labor cost, because my illustration is good whether my figures are right or not.

Let us assume that the labor cost was 40 percent. You have immediately provided for the expenditure of $3,000 for labor, the employment of $3,000 for labor and the balance material within, we will say, the next 12 months under that policy, whereas your labor expenditure, if you resist that policy, Senator King, would in that 12 months have been only $1,500.

That is a phase of the working out of this thing of the advancement of mechanization in industry that I do not think has ever had the emphasis that it ought to have. To me it is very easy, a perfectly automatic way of bringing forward something which otherwise you cannot take any advantage of now, into the immediate present by an expenditure through an investment of capital that itself results in an expenditure for employment away beyond what we could expend for employment. I think that thing has not had its proper weight, and I wanted to put it into this record.

Senator GORE. Progress has always been rather ruthless, has it not?

Mr. WILLIAMS. It has to be rather ruthless.

Senator BAILEY. You have placed your finger on the question of unemployment in America now. It is largely in the durable-goods industries, is it not?

Mr. WILLIAMS. The durable-goods industries, if I may defer Senator Hastings a little bit longer, or myself, in respect to his question, presents a very interesting picture. I would like to put these figures into the record in that territory. We of the N. R. A. deal with these unemployment figures very largely under the classification of nondurable-goods industries and durable-goods industries, retail trade and service trades.

We have made a great deal more progress in reestablishing employment to a satisfactory extent of volume in the nondurable-goods industries, as you gentlemen know, than we have ever made in the durable-goods industries, because the durable-goods industries have to come behind the others.

Here are some figures on that status that prevails between those two classifications particularly.

In the nondurable-goods industries, according to the figures from our Research and Planning Division, the following represent employment in the respective years named:

1926	4,070,000
1927	4,150,000
1928	4,110,000
1929	4,300,000

In January 1935, employment in the nondurable-goods industry was 3,720,000, only 680,000 below the 1929 figure.

Senator KING. Have you the figures for December last year, and October and November?

Mr. WILLIAMS. I have not, on this sheet; we can supply those if you are interested in having us do so.

In the durable-goods industries, the comparative showing for the years named on the same basis of presentation are:

1926	4, 420, 000
1927	4, 150, 000
1928	4, 175, 000
1929	4, 400, 000

At January 1935, the employment was 2,860,000—a shortage below the 1929 figure of 1,540,000 as against a shortage of only 680,000 in the nondurable-goods industries.

The CHAIRMAN. Have you any figures there for 1928 and 1929 and for 1931, at the time we passed this law?

Mr. WILLIAMS. I do not have it.

The CHAIRMAN. Has there been an increase in employment in the durable goods?

Mr. WILLIAMS. Yes; but it has not kept pace with the other. The other runs away ahead of it.

The CHAIRMAN. Will you put in the record at this place, if you can, the percentage of the increase in the durable- and nondurable-goods industries?

Mr. WILLIAMS. We will furnish that.

Senator BAILEY. Mr. Williams, I would like to know what is suggested, if anything, with respect to recovery in those figures. The durable goods necessarily will wear out, they are not permanent; they are durable but not permanent.

Mr. WILLIAM. Meaning that there is a demand ahead when there must be replacement of durable goods?

Senator BAILEY. Through obsolescence and depreciation. If we could take up that slack, that loss of 2,000,000 men who work in the durable goods industries, that would probably account for a million and a half more who would live from them and make three and a half million.

Mr. WILLIAMS. If you could restore full volume, if I may interrupt, Senator, your employment would be more than that million and a half, for the reason that in the interim the hours have been shortened very much.

Senator BAILEY. Take it that the heart and the chief manifestation of the depression is ended. Would you not suggest that the chief problem for Congress would be to have a policy that extends business and enterprise rather than one that restricts it?

Mr. WILLIAMS. If the Senator would let me, I would ask to leave that question lying up there on that bench. I am trying to be as helpful as I can to analyze this thing out from the administrative point of view, but there are a great many questions here on which I have no recommendation to offer to the Congress. We are here looking for help from the committee and the Congress and without disposition to go beyond our field.

Senator GORE. I think your silence is very suggestive and very significant.

Mr. WILLIAMS. I meant it only as good manners, Senator Gore, instead of any other indication.

Senator BAILEY. I gather that the smaller industries, what we call the "service industries" and the intrastate business, has reached a point where they are to be eliminated. Notwithstanding benefits and arguments, we have reached the point now where we are really reducing the number of codes. Then there is a considerable number of "big businesses", as we call them, which are rather favorably inclined to N. R. A.; they like the better wages, they like the regularity and uniformity, they are glad to have the child labor universally eliminated; but then there are large businesses of the same type and class which are rather wary of the N. R. A. Will you make a comment on that by way of explanation in that latter class?

Mr. WILLIAMS. That are wary of it?

Senator BARKLEY. Did you say "wary" or "weary"?

Senator KING. Both. [Laughter.]

Mr. WILLIAMS. As I understand it, there is no "e" in the word that you used?

Senator BAILEY. No "e" and no "ease." I said, "wary"—fearful and disposed to look upon it with aversion.

Mr. WILLIAMS. Senator, there is not any doubt about this, that there is quite a lot of criticism at one place and another with respect to N. R. A. generally or with respect to specific codes in N. R. A. In my own experience, it is equally true, that while there is that criticism and sometimes we sit and listen to it poured upon us at quite some length and with a great deal of vigor, very frequently when we turn the thing around and begin to ask, "Well, do you mean that you want to get rid of your code in your industry?" we very, very frequently get the response, "No, that is not what I am talking about. I want something changed in it and I want something to work differently, but the code has been very beneficial in our industry."

Without attempting to measure that in the presentation of the one side as against the other, my own judgment is that there are a great many more people in industry under the codes today who, even though they may be wanting some changes in the administration of the codes, want codes continued, than want them thrown out of the window.

Let me put in a little more of this memorandum that I have here——

The CHAIRMAN (interrupting). Before you do that, I wanted to ask you if in the durable goods class you include steel parts and automobiles, or if that is included in the nondurable class?

Mr. WILLIAMS. Your first group includes, based upon Bureau of Labor Statistics Indices, the following group of manufacturing industries. I am speaking now of the nondurable industries and I will give you both: Textiles and their products, leather and its manufacture, food and kindred products, tobacco manufacturing, paper and printing, chemicals and allied products, petroleum refining, rubber products.

In the durable-goods industries, the figures again are based upon Bureau of Labor Statistics Indices and include the following groups: Manufacturing industries, iron and steel, machinery, transportation equipment, railroad repair shops, nonferrous metals, lumber and allied products, stone, clay and glass products——

The CHAIRMAN (interrupting). Would cement be included in the durable class?

Mr. WILLIAMS. Cement, I think, is in the durable class.

Senator COUZENS. Why would you include steel in the durable-goods industry when such a large percentage of it is going to the automobile industry? That certainly is not durable goods.

Mr. WILLIAMS. It is one of those cases that lies in the twilight zone between durable and nondurable. It is not immediately consumed, there is quite a long period of time involved in its ultimate consumption, and we have resolved it in favor of putting it over in durable goods.

Senator COUZENS. But when you come to tabulate your employees, you do not count the employees in the motor-car business as engaged in the durable-goods industry, do you?

Senator BARKLEY. Steel may be durable while the automobile may not be.

Senator COUZENS. May I have an answer to my question?

Mr. WILLIAMS. I am trying to get it for you from the Research and Planning Division. I understand that the automobile employment statistics are not in either of these classifications.

Senator COUZENS. But the steel that goes into the automobiles is considered in the durable-goods industries.

Mr. WILLIAMS. That is so because of the long term involved in its consumption.

The CHAIRMAN. We have to recess in 2 or 3 minutes, and Senator King wanted to ask you to put certain things into the record.

Senator KING. No; I wanted to ask you to produce certain things. On December 17, 1934, the N. R. A. issued its notice of public hearings to begin January 9, 1935, on price control and price fixing. You made a statement at that meeting, and I wish you would produce that when you come again.

Mr. WILLIAMS. A copy of my statement at that meeting?

Senator GORE. Will we be in session tomorrow?

The CHAIRMAN. No; we will recess until 10 o'clock Monday morning.

Senator GORE. Then I would like to ask a question now.

The CHAIRMAN. I would like to say that Mr. Darrow will be before the committee on Monday.

Senator KING. I would like that last item I mentioned, and also a copy of the hearings. Also public hearings on price-fixing were held as scheduled from January 9 to January 12. If those hearings are published, I would like them to be produced. If you can send them up to the clerk of the committee here tomorrow, I shall be very glad.

Mr. WILLIAMS. May I ask the Senator in which form, or both, he wants those? There is a full transcript of all of the testimony of each of those hearings. In addition to that, our own research and planning division, in cooperation with another man especially assigned to the task, has made an epitome of that testimony all the way through.

Senator KING. Both. Also the public hearings on March 5 to 7, 1934.

Mr. WILLIAMS. Yes.

Senator KING. And also General Johnson's statement announcing that price fixing under the codes would have to stop. I want the full text of that.

Mr. WILLIAMS. Is that the published statement, or is it the office order 228?

Senator KING. The published statement. I suppose it is in your files. He made a public statement affecting the price-fixing activities of the codes, and the order. Also, I want General Johnson's statement of June 8, 1934, where he made another statement and explained that his opposition to price fixing was intended to be in futuro and not to apply to codes, and 90 percent of the codes had gotten under the tent at that time.

The CHAIRMAN. I may say, Senator King, that in that connection General Johnson has expressed a willingness, if it is the desire of the committee that he appear before us at any time. So, at some stage of these proceedings, General Johnson will appear before the committee.

Senator KING. I want those statements. And I want also the interpretations of the codes that have been promulgated by the code authorities.

Also the number of cases and the newspapers, which you publish weekly or monthly showing many of these interpretations.

Senator BARKLEY. I would like to ask Senator King if he proposes to read all of those?

Senator KING. No, I do not; but I propose to examine them.

Also the number of cases that the code authorities have attempted to prosecute, and the decisions of the courts, if you have them, including the two which have been announced during the past 2 or 3 days.

Also I want a list of the salaries paid to your employees who are over $3,000.

Also the amount that the N. R. A. has expended since its organization.

And I want also the names of all of the code authorities and the names of those who prepared the codes, and I want the salaries which are paid to the code authorities, so far as you have them.

And I want also the copies of letters that I called for the other day, those letters that were sent out under the frank of the Government.

Mr. WILLIAMS. If I may interrupt at this point, there is a memorandum covering that whole letter situation with samples of the letters used attached that is in mimeograph now and will be available to the committee very promptly.

The CHAIRMAN. Are you able to give us all of the data?

Mr. WILLIAMS. I think we are in position to give all of it. Mr. Smith says to me that there are some things involved in the question that we may not score 100 on, but we will give everything that is available.

May I add one sentence to this record, by way of concluding it?

The CHAIRMAN. Senator Gore wanted to ask a question.

Senator GORE. I won't be here next week and I want to ask you one or two questions. Your statement that there are now about 2,800,000 employed in the durable-goods industries shows a falling off in that class of employees of about one and a half million, does it not?

Mr. WILLIAMS. That is correct.

Senator GORE. If we could reemploy that million and a half, that would automatically restore to employment a large percentage of those who are engaged in the performance of services, transportation, and handling of those durable goods and construction work.

Mr. WILLIAMS. I assume that it would gain some increment in those employees. More than that, Senator Gore, the shortened hours would result in the employment of more people than that stated number if the volume of business were back to the same volume it was originally.

Senator GORE. The nondurable goods and the industries concerned in that list can largely finance their needs through commercial banks, short-time loans, and the like; is that not true?

Mr. WILLIAMS. I am sorry, but I did not hear your question.

Senator GORE. The concerns engaged in the nondurable-goods industries can finance their requirements largely through commercial banks and short-time loans.

Mr. WILLIAMS. I think that is correct.

Senator GORE. The durable-goods industries have to finance their requirements through long-term financing, do they not?

Mr. WILLIAMS. That is more generally true, I think, in their industry than in the other.

Senator GORE. Then whatever tends to discourage long-term financing tends to discourage the revival of those industries, does it not?

Mr. WILLIAMS. I hold that personal opinion.

Senator GORE. And if we could do something to eliminate uncertainty in that field of activity, it would go a long way toward the revival of industry.

Mr. WILLIAMS. I would agree with you that the elimination of uncertainty is the greatest possibility open before this Congress, and it is capable of making the greatest contribution to recovery in this country, and one step further, in my opinion, is the only thing that is capable of restoring full recovery in this country.

Senator KING. I think the committee agrees with you.

Senator GORE. I agree with you, and I think business is on the bit today, "raring to go," if they knew there were not any unforeseen pitfalls.

Senator KING. And high taxes.

Senator GORE. In the durable-goods industries, the one that seems to lag the most is construction, and of the constructions, perhaps residential buildings seems to be the worst in arrears. This situation exists today, taking prevailing wages into account, and the prevailing price of building material, that when a building is finished today, it is not worth as much as it cost to build. Is that not true?

Mr. WILLIAMS. I am afraid it is.

Senator GORE. That is just an impossible situation, is it not?

Mr. WILLIAMS. I am in rather bad standing in that territory, for the reason that I was one of the protestants against some provisions in the construction code which in my opinion indicated that two results were going to happen: First, that construction would not move on for the reasons that you are indicating, and instead of having any normal employment at a reasonable wage, there would be no employment at a theoretically higher wage; and second, that those provisions were definitely unfair to certain groups of population in that it shifted the possibility of employment from groups ordinarily used in that industry to other groups because, as tested out in some sections of the country, the wage required was sufficient to command the

services of a different type of employee from that which had ordinarily been used in that industry.

Senator GORE. Then you undoubtedly accepted the theory, and the fact, too, that the admission that wages can be too low admits that wages can be too high?

Mr. WILLIAMS. I think there is no question about that. I should have added to my statement there, that it was not in an N. R. A. administrative position, but in an advisory position, that I took at that time.

Senator GORE. I have wondered—and you need not express any opinion if you do not care to—if a policy had been adopted in the beginning of staggering employment, staggering the work, and giving employment to as many people as possible, taking this concrete case where hours were reduced from 8 to 6 hours a day. If industry had continued and had been allowed to continue the payment of the same hourly wage instead of being required to pay 8 hours wages for 6 hours work, that would have employed one-third more people. That would not have increased the labor cost per unit of output. The course which was pursued, I think, is subject to that criticism, at least theoretically if not in fact. When you required industry to pay 8 hours of wages for 6 hours of work, that increased wage registered itself in the increased cost, the increased cost reflected itself in the increased prices, the increased prices reduced consumption, and reduced consumption just put on the brakes and stopped you from going on? You need not answer that unless you care to.

Mr. WILLIAMS. I was going to make this observation, that while by staggering employment without changing the hourly rate, you can make the appearance of employing enormously more people, you are confronted with the result of cutting down the weekly pay envelope amount, which is, of course, the final test as against the hourly rate. Or, the question whether or not the worker is making a living wage.

Senator GORE. Is that the test exactly when you have 10 or 12 million unemployed, not making anything, who have to live on these people who do earn something?

Mr. WILLIAMS. There is some element of fact in what you are talking about, but how to measure it I do not know. There is a relationship there.

Senator GORE. It is a distribution of purchasing power. That ought to be one of the main objectives in times like these. We all like to see high wages but not carried to the point where they destroy the chance to work and create or aggravate unemployment—for instance—in times like these, but it is like a ship that is on fire or in a storm, where the situation demands different action than normal conditions do.

Mr. WILLIAMS. If I could put this one statement in, it would throw some little light in that territory as indicating how far the application of these codes and N. R. A. principles have gone, not only to spread the purchasing power, but to increase the purchasing power.

Senator GORE. That is a vital point.

Mr. WILLIAMS. Going to the value of the products produced in 1929, our figures show $69,960,909,712. In 1933 they showed $31,358,840,392. There is less than half produced in the year 1933. There was a decrease of over 38 billion.

Senator BAILEY. What is that measure?

Mr. WILLIAMS. The value in volume, which is a kind of measure that is not a strictly accurate measure of volume.

My purpose was in putting it into the record at this point to show a comparison to the number of employees at those two times as already put into the record and the high volume of business as against the number of employees as already put into the record as against that lower business or value of product in 1933 and the net of the comparison is a showing that for that very much smaller value you got figured in 1933 there was much more employment per unit if you want to say it that way than there was in the other situation showing that we had spread the employment enormously.

Senator GORE. There is a fundamental difference between the creation of purchasing power and the transfer of purchasing power. What the country needs is the creation of additional purchasing power. The transfer of purchasing power from one individual to another or from one group to another may help the group that it was transferred to but it does not help the other person or group that parted with the purchasing power for nothing.

Mr. WILLIAMS. It does not last long. It is not a sustaining thing.

The CHAIRMAN. Was there some other question you wanted to ask Senator GORE?

Senator GORE. No; that is all.

Senator BARKLEY. Will we interrupt Mr. Williams' testimony on Monday to hear Mr. Darrow's testimony?

The CHAIRMAN. Mr. Darrow is from Chicago and he has not been very well and he said he had that day open and I thought it would be for his convenience to do it in that way.

I want to say Mr. Williams as one member of the committee that we regret very much that you are leaving the N. R. A. From the impression you have made on the committee you are very valuable.

Mr. WILLIAMS. Thank you sir. I find myself very sorry to be called back but I have other duties.

(Whereupon at 12:10 p. m. the committee adjourned until Monday, Mar. 18, 1935, at 10 a. m.).

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

MONDAY, MARCH 18, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Connally, Lonergan, Black, Gerry, Guffey, Couzens, Keyes, Metcalf, Hastings, and Capper.

Also present: Mr. Donald R. Richberg, Executive Director, National Emergency Council; Mr. Blackwell Smith, acting general counsel, National Recovery Administration; Mr. Leon Henderson, economic advisor, National Recovery Administration.

The CHAIRMAN. The committee will come to order.

I may state for the information of the press that it was planned this morning that Mr. Darrow would appear before the committee, but at the request of Senator McCarran, one of the coauthors of the resolution for this investigation, who could not be in town today and who desired very much to be here when Mr. Darrow goes on the stand, Mr. Darrow's appearance was postponed; and for that reason, and that reason only, Mr. Darrow is not being heard today. We will get to him when Senator McCarran returns. I do not know just when that will be, as he is temporarily out of the city. He may be making a St. Patrick's Day speech today, I don't know. [Laughter.]

Some of the committee wished to ask Mr. Williams some questions.

STATEMENT OF S. CLAY WILLIAMS—Resumed

The CHAIRMAN. Is there any further statement you wished to make? I believed you had finished your statement the other day.

Mr. WILLIAMS. Except as questions are fully developed, I may want to make a few epitomizing statements.

The CHAIRMAN. Senator King wants to ask you some questions this morning.

Senator KING. Mr. Chairman, I intend to read into the record in a few moments, excerpts from the report of the Federal Trade Commission to the President in response to Executive order of May 20, 1934, with respect to the basing-point system in the steel industry. I shall call attention to that in a few moments and read it into the record.

Now, Mr. Williams, your activities in business have largely been with the tobacco industry, have they not, or cigarettes, whichever you want to differentiate?

Mr. WILLIAMS. In recent years. I practiced law in the general practice about 10 years, and worked in a number of business relations then, but for the last 18 years, I have been in the tobacco industry.

Senator KING. The corporation with which you are identified is rather a large one, is it not?

Mr. WILLIAMS. It is.

Senator KING. Is it fair to assume that it would come under the denomination of "big business"?

Mr. WILLIAMS. I would not volunteer as flattering a term for its size as that, but it is ordinarily referred to as a big unit in the tobacco industry.

Senator KING. And is it not a fact that soon after the organization of the N. R. A., and in the first instance, the legal division took the position that the antitrust laws were entirely suspended?

Mr. WILLIAMS. I could not say that that is true, Senator King, as I was not connected with N. R. A. directly in the early stages at all. My first connection, I think, began about November 1933 when I was named a member of an advisory board for industry.

Senator KING. Did not your information after you entered upon this task, lead you to that conclusion?

Mr. WILLIAMS. It did not, frankly, Senator. My understanding was that the position taken was that the National Industrial Recovery Act went thus far and no further with respect to the antitrust law, that it suspended such parts of that act as would have resulted in an impossibility of getting together on the points and for the purposes specified in the National Industrial Recovery Act.

Senator KING. Did not the administrators take the position that the industry was making the code and was entitled therefore to insert anything which it conceived to be necessary or desirable for industrial recovery?

Mr. WILLIAMS. I understood they took the first half of that position, that the industries were to make and present their codes, but I did not understand it took the position that they were entitled to insert anything they wanted to. The latter thing had to be submitted, as I understood it, to a test of whether or not it was in line with the purposes of the act and was drafted for the accomplishment of those purposes.

Senator KING. Was not the result of that an entirely new construction was given to unfair competition than that which had been determined by the Federal Trade Commission?

Mr. WILLIAMS. I think it is fair to say——

Senator KING (interrupting). Can you not answer that yes or no and then explain if you have to?

Mr. WILLIAMS. Senator King, I cannot answer it positively yes or no for the reason that I was not a party to the situation at the time of which you speak, and I have to leave some leeway there on the question of whether my inferences are correct or not.

Senator KING. If you cannot answer it, I will pass on to something else.

Mr. WILLIAMS. I will give you the best answer that I can under the circumstances.

Senator KING. As the result of the attitude which was taken, did not the codes contain one or more of the following practices, open prices, resale price maintenance, price fixing, compulsory costing sys-

tems, floor costs, uniform costs, average costs, uniform contracts, uniform discounts, customer classification, allocation of production, production control and various other devices intended to suppress competition between the various members of the different groups?

Mr. WILLIAMS. The answer to that question listing so many things——

Senator KING (interrupting). Then I will take them up separately.

Mr. WILLIAMS. I should appreciate it if you would.

Senator KING. Did not the codes contain provisions with respect to open prices?

Mr. WILLIAMS. A number of them did.

Senator KING. Most of them did, did they not?

Mr. WILLIAMS. I could not say yes or no.

Mr. Henderson, who is the statistician, says the answer to the "most" is, yes.

Senator KING. And did they not contain provisions respecting resale price maintenance?

Mr. WILLIAMS. Some codes did.

Senator KING. A large number?

Mr. WILLIAMS. Very few.

Senator KING. Did they not contain provision respecting price fixing?

Mr. WILLIAMS. There were some codes that had price-fixing provisions in them. Very few.

Senator KING. I shall put into the record later, the number. Did not the codes contain provisions for compulsory costing systems?

Mr. WILLIAMS. There were provisions in a great many codes for the establishment of a uniform method of costing. That is the territory covered in Mr. Richberg's testimony the other day and touched upon in my early testimony. There were several hundred codes that contained provisions for that, but the system was approved for only 39 codes.

Senator KING. Did not the codes contain provisions for floor costs?

Mr. WILLIAMS. Will you help me a little in explaining "floor costs"?

Senator KING. Uniform price.

Mr. WILLIAMS. If by that you mean that some codes contained provisions against selling below a certain established price, the answer is yes, in some codes.

Senator KING. There was a definite meaning as to what floor costs meant? A definite interpretation of the words "floor costs"?

Mr. WILLIAMS. I was confused a bit by your word. "Price floor" is the term I used for the same thing that you mean when you say "floor costs."

Senator KING. Were not provisions in codes for uniform costs, and did they not result in average costs and uniform contracts?

Mr. WILLIAMS. This provision for a uniform costing system would, so far as applied, have resulted in a certain uniformity of shown costs. There might have been, and that has always been the objection to those provisions, some differences in the actual cost without differences in the shown costs.

Senator KING. Did not the codes contribute to monopoly in that they provided for uniform discounts?

Mr. WILLIAMS. I do not think they contributed to monopolies through that provision.

Senator KING. Did they provide for uniform discounts?

Mr. WILLIAMS. In a number of them, yes.

Senator KING. And customer classification?

Mr. WILLIAMS. There are a few.

Senator KING. Allocation of production?

Mr. WILLIAMS. There is some allocation of production. Very few.

Senator KING. And production control?

Mr. WILLIAMS. Some production control.

Senator KING. Senator Walsh wants to ask a question.

Senator WALSH. Mr. Williams, in looking over the testimony the other day, I find that Senator Gore asked you if the restoration of confidence in N. R. A. was not the most important requirement to recovery, and you answered yes.

Mr. WILLIAMS. I said that.

Senator WALSH. You did not give any reason for that answer. Will you give us your reasons?

Mr. WILLIAMS. That leads into rather broad territory. If I may reconstruct the position at the time Senator Gore asked me that question, I think he simply asked if I did not regard the restoration of confidence as one of the most important things in connection with this N. R. A. setup and administration.

My answer, as I recall it, was yes, that I did regard it as not only one of the most important, but the most important phase of the situation, and I think I added that I thought that the restoration of confidence was the only thing that would restore us to a full industrial volume and status in this country.

Senator WALSH. What is preventing the restoration of confidence?

Mr. WILLIAMS. I would not assume to give a categorical answer to that. If I may get at it from a slightly different position and give you as much answer as I can give you, Senator Walsh, out of my own thinking, marking it as only my own thinking as I give it, I would say that certain suspicions that have existed in the minds of those concerned with N. R. A. or the administration of N. R. A. or the results of administration of N. R. A. have done a great deal in a great many important quarters to prevent that full acceptance and enthusiastic support and prosecution of the valuable tenets of the N. R. A. faith that would have been very helpful.

There is some hold-back that we have been confronted with from time to time in the administration of N. R. A. We have been confronted with a hold-back here and there, failure to come enthusiastically forward and go enthusiastically through with the adoption and application of certain things, because of suspicions or the fears that while those were the things that were being put forward, there might be other things that also were coming forward that had other purposes than what some people have regarded as the prime and the valuable purposes to be served by N. R. A.

Of course, it is impossible to stage a thing like N. R. A. to conduct an excursion into as much territory as N. R. A. led into by its own original charter in the act without having had on that train a lot of people who came in either as camp followers, as I said one time before in a speech, or, attached themselves in more or less important ways, that had ideas of their own that they wanted to present, some of which

in the opinion of a great many people, led well beyond what they regarded as the values and what they regarded as the administration's purposes in connection with N. R. A.

I mean that there is an impossibility to hold a movement like this to interpretations that lie exactly within the administration's own purposes or the proper purposes. Everybody that comes along can make his own interpretation as to what this, that, or the other means, so we had some of them, and out of some of that "side-line stuff", if we can characterize it as that, and some of it was in a little better position than side-line position, there grew up or there was established a basis for some of these suspicions to grow.

That leads into this question of whether or not under N. R. A., a thing I touched on the other day, the purpose was really for the Government to take over business and administer it in all of its details. There are a lot of people in this country that have more or less enthusiasm for coming forward and helping serve the original, the fundamental purposes of this act, in which accomplishment they think they see a social gain for the country (certainly that, and possibly an economic gain), that are entirely without enthusiasm over this question of Government getting into business and dictating every detail of it.

If you will take a man whose reaction is along those lines, you have raised for him the question of whether or not he had not better check his enthusiasm for serving the one for fear that he may be lending aid and comfort to the other.

That is one element of the thing I am talking about. Let me relate it to the act itself, and——

Senator KING (interrupting). Let me interrupt you and ask you this: Is it not a fact that some of those who have favored with so much enthusiasm, using your word, to obtain some social ends, are persons who have found positions in the N. R. A. and helped to draft the codes and were interested industries?

Mr. WILLIAMS. I am not able to answer that, Senator King. I do not know that personnel situation well enough to answer that.

Senator WALSH: Let me take one illustration, Mr. Williams. The Cotton Textile Code was the first code shaped and conformed and put in operation?

Mr. WILLIAMS. Yes.

Senator WALSH. The cotton industry for a time thrived under that code apparently?

Mr. WILLIAMS. Yes.

Senator WALSH. Today it is prostrate. The reports that have come to Senator George and myself from cotton manufacturers in the North and the South are alarming.

Senator KING. Senator, the code is in force yet with all of its beneficent results.

Senator WALSH. I am going to ask him that. They even go so far as to state this, that within a few weeks, if something is not done, the 500,000 operators in that important industry will be on the welfare rolls of this country. Something apparently has happened to that industry other than the N. R. A. operations. What is it that is retarding recovery in an industry like that?

Mr. WILLIAMS. I think, Senator Walsh, and I am attacking one of the hardest situations we have when I am talking to the textile

situation, but I think we have in the textile situation a unique and exceptional situation as tested by industry generally in this country, and the problems in this industry generally in this country, in that we have such a high excess of productive capacity developed in that industry. If you go back to the history which I know you are familiar with as——

Senator WALSH (interrupting). Pardon me. The men in the industry state that they have been for weeks trying to get an amendment or modification of the code so as to limit production. Why are they not able to do it?

Mr. WILLIAMS. There is a great deal of argument as to whether or not the limitation of production in any industry is a sound principle in the public interest. There is some difference of opinion between a number of us in that territory. It presents a question of what ends you are going to serve, and there have to be some elections as what particular ends we are going to serve, but the fundamental problem, I think, in the textile industry, and I am speaking to my personal opinion solely, is a development of productive capacity that if not held in check will flood a market already impeded and impaired greatly through the introduction of rayon and other fabrics in competition with cotton.

It will flood the market to the extent that it just paralyzes the whole situation. If that be so, the question presented is whether or not it is not in the public interest in a situation like that to prevent this overdevelopment of the productive capacity from just being operated in such way as to leave that whole segment of American industrial life prostrate, or whether or not we should permit some regulation that would at least sustain it at a living level. I think that is the question presented in the textile situation.

Senator WALSH. If in all of these industries—and this illustrates it, that outside of the N. R. A. there are other governmental activities operating that are tending to impede in many instances the good effects of the N. R. A., and in this very case we speak of now, there is the processing tax, of course.

Mr. WILLIAMS. That is where I have so much difficulty in diagnosing what should be done in N. R. A. and elsewhere, as to what is the cause of one thing and another.

Senator WALSH. So that in trying to build up this industry and improve it, you have another activity of the Government modifying the processes, and that is tending to hold it back. And of course you have in this case also the complaints they are making about importations from Japan.

Mr. WILLIAMS. Yes; also the Japanese importations.

Senator WALSH. Which have increased tremendously in the last 2 months, and the inability of the N. R. A. agencies to meet that situation and correct it. Do you think we have too many activites of Government trying to do too much, and that that is a contributing factor to our recovery?

Mr. WILLIAMS. Being here as from the N. R. A. group, one activity, I do not like to speak to the broad territory of too many, but if I may get home to the N. R. A. proposition and give you as much answer as I have in the territory in which you are speaking, I think this is so, if I may build a phrase on just what you were saying there. I think if in N. I. R. A.—the National Industrial Recovery Act—and

if in N. R. A., the administration unit of the N. I. R. A., we were to get to a habit of shooting with a rifle, if I may say it that way, instead of shooting with a scatter gun, we would be developing a great deal of confidence that we are never going to get into until we do that.

For instance, I do not know any reason why when we start out to serve these simple ends, the elimination of child labor, the establishment of a minimum wage, below which the workers' time shall not be submitted to competition, the limitation of hours, and the introduction of a few provisions eliminating unfair trade practices, I do not know why when we start out to accomplish those ends we should not take a rifle and shoot right at those things instead of taking a scatter gun and shooting at them, thereby opening the door so everybody can come in and make every kind of contention as to what we are trying to do.

If you want to know my opinion as to how all of these wild contentions came into all of these situations, they came in through our shooting with a scatter gun, talking in generalities instead of shooting with a rifle specifically at the thing we were trying to serve.

Let us go to the act and look at it, and I am speaking wholly from a personal point of view. I do not want to be in the position of being credited with speaking from any other.

When you read in an act like this that vests as much power as this act does, the single phrase "to do certain things as far as it shall be necessary to do them in furtherance of the purposes of this act", and then turn back to the introductory clauses of the act and read what is back there, I have never been able, and I do not think any other business man in this country has ever been able to tell what is or what might be considered in furtherance of the act, because the act aspires—not speaking too critically to it—speaking more to its draftsmanship than to anything else—aspires to the furtherance of a great many ends.

Senator KING. A sort of umbrella over anything, isn't it?

Mr. WILLIAMS. Let me say it this way and I will agree with you. It was in such form that a great many people regarded it as an umbrella over anything, and we are speaking to the question of confidence, Senator King, and if they *regarded* it as an umbrella under which to do anything, then it is immaterial that it was not an umbrella under which to do everything.

Let me say again on the question of confidence, you go further to develop confidence, if I may make bold to make a suggestion, by using a rifle instead of using a scatter gun, which leaves everybody to interpret the act as meaning everything.

That is where all of these wild ideas came into this situation. There are plenty of people that think that N. R. A. in the end is intended to take charge of everything. There are men who think that the N. I. R. A. was a commission to somebody to control all of business in all of its phases.

I do not think that. I do not think it should tear down the building because there is a leak in the roof, as I said the other day, in three or four different places.

Let me relate this confidence thing to figures. I think I can put my hand on that in a minute. When I said I thought that the restoration of confidence meant so much.

You gentlemen are talking about a relief bill under which you are going to put into purchasing power channels, in the pay rolls of this country and into the pockets of the people of this country for spending, some four billion dollars or whatnot.

Senator KING. Four billion and eight hundred and eighty million.

Mr. WILLIAMS. I want to compare. We are talking about what a restoration of confidence in this country can do, and I start with what we are trying to do and recognize as necessary, because we have not that restoration of confidence and certain things are not functioning..

Let me put these figures in the record. In 1929, the value of products in this country was $69,960,909,712. In 1933, it was only $31,358,840,392. That is the product as it came from the factories.

Senator KING. If you will permit me to interrupt. And out of that we took between 13 and 15 billion dollars as taxes.

Mr. WILLIAMS. Yes. I was leaving that element out, and in saying yes I did not mean to subscribe to the fact, but that was not a part of my showing. The item I want to call attention to on the question of confidence and what the restoration of confidence can do, is this. The value added by manufacture, that is the labor, in that volume of goods for 1929 was, in 1929, $31,783,009,666..

Senator KING. Pardon me. Do you include in those figures the products of the farms?

Mr. WILLIAMS. This is industrial. In 1933, the value added by manufacture was $14,610,401,415, a loss or a decrease in 1933 as against 1929 in the item of the value added by manufacture of $17,172,608,251.

I am talking about confidence, gentlemen. If we had the confidence to get the volumes of business that we used to have, restored, I am indicating that upon the basis of the figures of 1929 as against the figures of 1933, there would be in a restoratoin of the volume upon the old basis, 17 billion dollars of purchasing power restored to the people who work for pay in the industries of this country, and that is on the old basis. Meanwhile, wages have been raised and hours have been shortened, and the values added by manufacture are presumably in the higher percentage of the total value of the product than they used to be.

I think that covers what I wanted to put into the record on that phase.

Senator KING. Mr. Williams, may we return to the line of questioning when Senator Walsh came. I pay tribute to you as a lawyer and as an executive, and I am going to ask you a number of questions, and you can answer them as briefly as you can and we will get along much faster. Is it not true that during the few months of the operation of the N. R. A. in the summer of 1933, while the first few codes were being written, there was little if any attempt to include price fixing?

Mr. WILLIAMS. I cannot answer that question for the reason that I had no connection with N. R. A. at that time.

Senator KING. Would you be able to answer this: Is it not true that later the business groups, seeing an opportunity for price fixing or monopolistic control, became rather bolder in asking for price-fixing provisions?

Mr. WILLIAMS. Your question leads into the later period, and without being able to make comparison between the later period and the earlier period with which I was not familiar, it is true that in the later period there were a number of requests for these—I do not want to characterize them as price-fixing things, because there were a min mum of those, Senator, in any, but of provisions relating to price—open-price and loss-limitation provisions, and so forth.

Senator KING. They come in the category of the instances that I illustrated a few moments ago of the open prices, resale price maintenance, price fixing, compulsory costing systems, and so forth. That list I read a few moments ago.

Mr. WILLIAMS. There were a number of requests for provisions of those general kinds, but your question had in it the phrase, "with the purpose of establishing monopoly." I could not say that I knew anything that indicated that that was the purpose behind those things. My own thinking on it, based on my own observation with respect to it was that they were provisions calculated to effectuate the general purposes of these prime values that we have been referring to in N. R. A., and not in any way attempts to establish a monopolistic situation.

Senator KING. Is it not a fact that this effort to secure the incorporation in the codes of the provisions to which I referred a few moments ago, aroused considerable opposition before the end of the year?

Mr. WILLIAMS. There was some criticism of that from time to time.

Senator KING. And is it not a fact that before the latter part of the summer, the officials of the N. R. A. began to show some signs of fear that the movement for price fixing and to the fastening into the codes of the provisions to which I have referred, were going too fast and too far?

Mr. WILLIAMS. There was evidenced in the N. R. A., whether as a recently acquired realization as of that time or only as an expression at that time of a realization had all the while, the realization that we had to be exceedingly careful in this matter of provisions that referred to or could in any way affect prices.

Senator KING. Is it not a fact, that at the public hearings on March 5 to 7 of 1934, the question of price fixing and the inauguration in the codes of those provisions to which I have referred, was given a prominent place on the program?

Mr. WILLIAMS. I think that is a fair statement.

Senator KING. And is it not a fact that at those hearings, representatives of many of the associations, especially the retail association purchasing agents of various organizations, appeared against the code and particularly against any policies or provisions that might be denominated as price fixing and producing or tending to produce monopolistic control of industry?

Mr. WILLIAMS. There were a number of such appearances, some of them even going to the point of people objecting to those provisions as working between the people from whom he bought, and appearing for them for his own group as sellers of the goods bought from others.

Senator KING. Is it not true that the consumers' organization, which as I understand has some place in the N. R. A., made vigorous protests against the monopolistic tendencies of the N. R. A., against what they denominated as the price-fixing provisions?

Mr. WILLIAMS. Without adopting in my answer the exact words of your question, it is true that the Consumers' Advisory Board has from time to time been critical of these provisions.

Senator KING. I have here a number, a great many pages of protests filed by the Consumers' Council, which later on I shall ask leave to have read into the record.

It is a fact then, is it not, that the Consumers' Council frequently, in fact constantly, protested against that tendency of the N. R. A. toward monopolistic control of commodities, and particularly those things entering into the life of the people, food, solid fuel, and so forth?

Mr. WILLIAMS. They protested frequently against various kinds of price provisions, and in protesting urged, it seemed to me, all of the reasons available for their urging. You have to have in mind that the Consumers' Advisory Board is a pressure group representing a specific interest——

Senator KING (interrupting). It is not any more of a pressure group, is it, than the manufacturers?

Mr. WILLIAMS (continuing). If you will let me finish my statement—just as is the labor group and as is the Industrial Advisory Board a pressure group. I plead all three of us as guilty of being pressure groups.

Senator KING. You all got under the umbrella, did you not?

Mr. WILLIAMS. Yes.

Senator KING. Is it not a fact that in the spring of 1934, General Johnson, who was then the administrator, announced that price fixing under the codes would have to stop?

Mr. WILLIAMS. There is a general order that very much limited the territory for that kind of provision. We can produce the exact order. We have produced it, in fact.

Senator KING. I would be glad to get that order and put it in the record.

Mr. WILLIAMS. That is office memorandum 228.

Senator KING. Is it not a fact that as the result of the statement of General Johnson the N. R. A. was immedicately flooded with protests from organizations and various industrial code authorities responsible for the codes containing price-fixing provisions; that is the provisions which I have denominated as tending to or contributing to price fixing, protesting against General Johnson's position and insisting upon a continuance of the policies under which price fixing would be set up or contributed to being set up.

Mr. WILLIAMS. I understand that upon the general publication of the provisions of office memorandum 228, a great many messages were received at the N. R. A. offices, the tenor of a great many of which was to the effect that it would be impossible for a great many people in this country to bear their part of the service to these primary ends of the N. R. A. if they were not permitted the protection against certain unfair practices, some of which at least were served by provisions which lie to some extent in the price territory. I am not speaking directly of price fixing except as it may have had that status in a very few codes.

Senator KING. The order of General Johnson, though was construed, was it not, as a prohibition, or rather as a criticism of the ruling and practices under which it was contended that many of the monopolistic tendencies were permitted and resulted?

Mr. WILLIAMS. The order was a negativing of the possibilities that the N. R. A. was going to lend itself to the kind of thing that is suggested by your question.

Senator KING. The manufacturers and others protested against his order, didn't they?

Mr. WILLIAMS. The order was not limited to that, Senator King, in that it went forward and provided only for some of these things in cases of emergency and under no other circumstances. I think I can clear a little bit of the atmosphere by saying this from my personal point of view. It is not a secret to anybody who knows my views in this territory. I am declared in public speeches as opposed to price fixing absolutely if by price fixing you mean a scheme under which the price of any product is lifted above a normal position for that product.

Senator KING. As a matter of fact, you made a speech, did you not, in opposition to fixing prices in codes except in the raw material industries. And you thought tobacco was a raw industry?

Mr. WILLIAMS. That is not quite an accurate interpretation, I think, if I may say so, Senator King, and explaining myself again in that territory, I do not think we can fool with prices by way of fixing them and maintaining them.

Senator KING. I agree with you.

Mr. WILLIAMS. My personal view, and I want to keep it out in front that I am talking of my personal view in it, my personal view is this: That we cannot justify going into price territory any further than it is necessary to go into price territory to eliminate unfair practices that are destructive of the capacity of the victims thereof to meet the social requirements of this bill in the way of paying wages and observing hours and working conditions and eliminating child labor.

I am for going that far even if in going that far you have to touch something that feels like price, but I am not going beyond the line at which you serve those purposes and still stop short of lifting prices above the normal level at which they belong. I do not think there is much issue between a great many of us in that territory.

Senator KING. Is it not a fact that General Johnson, because of these protests, on June 28, 1934, changed his position and made a different statement?

Mr. WILLIAMS. I do not know whether there was a special announcement issued at that time or not.

Senator KING. So as to be entirely fair to him, did he not explain that his opposition to price fixing, or these practices as I have denominated as calculated to bring about price fixing, was intended solely for future codes, and that his order did not apply to codes already approved?

Mr. WILLIAMS. There was an interpretative announcement along those lines that you indicate.

Senator KING. I would like to have that statement of his. And is it not a fact that this restatement of General Johnson's made the original statement of price fixing in the codes absolutely meaningless, because at that time nearly 90 percent of the industries that have come under the codes had already had their codes approved?

Mr. WILLIAMS. There were a great many codes approved, Senator King——

Senator KING (interposing). Where not 90 percent of all that have been approved, approved at that time?

Mr. WILLIAMS. They were, but the point I want to make just there is, that while the codes themselves were approved, the particular provisions with regard to price were subject to go into operation only upon a further approval, which had been given only in a minimum of codes, therefore the great price territory was still open at that time even though the codes themselves had been adopted.

Senator KING. Is it not a fact that during the summer of 1934, the price fixing conflict raged in and out of N. R. A. and many of the officials of N. R. A., especially those who were representatives of business concerns and who had found a place in N. R. A., were insisting upon continuing these practices, and others insisting that they should be abandoned?

Mr. WILLIAMS. There was quite some discussion during that period about price-fixing provision generally. I would not say there was anything in the situation that could be described by a statement that the controversy raged. There was a great deal of recognition of the importance in that territory and of danger in that territory.

Senator KING. Did you not, Mr. Williams, predict that the N. R. A. would have to prohibit price fixing and did you not argue that the wage and hour provisions if enforced, would have the effect of sustaining prices?

Mr. WILLIAMS. I argued this, that if there was a complete compliance throughout all of any industry and it can be extended to all industries, of the minimum wage and the maximum hour provisions, that the end which some people who were seeking price-fixing provisions were seeking through asking for those price-fixing provisions, would be largely served because if one's competitor cannot reduce his costs by taking it out of labor below a certain minimum, his opportunity to get inside of his competitor who is paying the higher wages, of course is very much limited, meaning, to say it in another way, that if nobody can work below a certain cost level for labor, then to the extent that the people who used to be below that are brought up to that, to that same extent that man's capacity to undersell his competitor is destroyed.

I made that argument and have a great deal of faith in it, Senator King, as a solution of a large part of this price controversy, because I think when once we have full observance of minimum wages and maximum hours, the margin of play between the high price of the one and the low price of the other is so much reduced, that those unfairnesses of competition between competitors are largely wiped out, and therefore there is not the pressure behind the incentive to serve there.

Let me add one other sentence if I may, Senator——

Senator KING (interposing). You answered my question. Your answer would be practically yes, would it not?

Mr. WILLIAMS. Except that I was avoiding some of the phrasing in your question, the answer is yes. I would not subscribe to all of the phrasing.

Senator KING. We will get along much faster if we limit the explanations, my dear friend. I do not want to hamper you, of course.

Mr. WILLIAMS. I do not want to appear to be retarding, Senator King, but I do not want to take myself beyond where I live.

Senator KING. Were there not public hearings on price fixing held on the 9th to the 12th of January, and was there not a great deal of testimony presented there in opposition to price-fixing procedures or policies and practices of the N. R. A.?

Mr. WILLIAMS. There was some testimony to that effect. I do not think there was a very great volume of it, but I believe, to get the full answer in, the reason there was not any more than there was was because it was rather generally known——

Senator KING (interposing). That they had the price fixing?

Mr. WILLIAMS (continuing). The Board had already arrived at a policy and announced it in connection with the calling of the hearings, that it was opposed to price fixing as such.

Senator KING. Were not many of those who appeared representatives of the big units and of big business, and did they not contend for the continuation of the practices to which I have called your attention?

Mr. WILLIAMS. There were some that meet that qualification that appeared there.

Senator KING. Was it not understood that the Board would render a decision soon on price fixing under N. R. A.?

Mr. WILLIAMS. The whole price territory, not just price fixing.

Senator KING. At that meeting to which I have just referred, there were a number of papers read and statements made by representatives of the consumers' organizations, were there not?

Mr. WILLIAMS. There were some; I don't know how many.

Senator KING. I have perhaps 100 pages of them here which I shall put in the record later. Is it true that up to this date no statement had been made by the Board upon this matter?

Mr. WILLIAMS. No formal announcement of policy has been made to this date.

Senator KING. And the failure of the Board to make a definite decision upon those hearings has added, has it not, to the confusion and uncertainties that exist today in some business activities and in the minds of the public generally?

Mr. WILLIAMS. I do not think it has added to it, but I think, working negatively, it has failed to alleviate what there was, which comes to about the same thing.

Senator KING. Is it not true that almost from the beginning of N. R. A. it has found itself in conflict with business groups over price fixing.?

Mr. WILLIAMS. That has been true, certainly for a part of the time, but there is very little conflict now, Senator King, on the question of price fixing as such, and let me say the sentence I wanted to say a minute ago. When I am talking to you about price fixing and in other places talking about the price territory, I am not sure that you and I are always talking about the same thing——

Senator KING (interposing). Before you answer that, let me ask you this. In many instances, was not the administrator coerced or blackjacked into allowing these price-fixing monopolistic practices by industries with "If we cannot have these provisions, we do not want codes"?

Mr. WILLIAMS. I do not think anybody has been blackjacked down there. I do not think anybody has been coerced into anything.

Senator KING. Those threats have been made, haven't they, "If we cannot get these prices, we do not want codes at all"?

Mr. WILLIAMS. I would not characterize them as threats.

Senator KING. Persuasions?

Mr. WILLIAMS. I will accept them as persuasive arguments, as horse-trading positions, or any of those positions that stop short of threats. Of course, those ideas were advanced on one side as other pressures were developed on the other.

It is the thing I was talking about the other day. The man with a code was called upon to pay higher wages, work shorter hours and make other expensive adjustments, and he said, "I would like to work along those lines, but I am the victim of some unfair practices on the part of my competitor which destroys my capacity to pay. If you will help me get rid of these unfair practices on the part of my competitor, I will be glad enough to observe your wages and your hours." If that is what you mean, the answer is yes.

Senator KING. Did not many of the big industries and large units say that unless they can have these prices and have them legalized by the code authority, they do not want a code and that they will not come into the N. R. A.?

Mr. WILLIAMS. None of them ever said that to me. I am not in a position to deny that some of them said it. I am ignorant in the territory.

Senator KING. You know that they were using persuasive arguments, were they not, for the purpose of continuing those policies to which I have called your attention?

Mr. WILLIAMS. I start with the assumption that everybody on every angle of a code was using all of the persuasive arguments he could get to support himself in the position that he was working toward.

Senator KING. Is it not true that many of the deputy administrators favored the continuation of these policies and even a stronger one which would tend to monopolistic control of industry?

Mr. WILLIAMS. I cannot give you a report on that; I do not know.

Senator KING. Is it not true that some of the deputies, after they had aided the industries under their supervision in formulating their codes, which included these practices and policies and the validation of them, resigned and went back to their respective industries?

Mr. WILLIAMS. I do not know that fact. I neither deny it nor affirm it.

Senator KING. Some did resign, didn't they?

Mr. WILLIAMS. Administrators have from time to time resigned.

Senator KING. And many of the deputy administrators and those connected with the N. R. A. were representatives of the large units of production or manufacture?

Mr. WILLIAMS. I would not say they were representatives of. I would say that they were drawn from the ranks of industry or had in the past been connected with and some of them carried quite important office in the industry.

Senator KING. I was shown a book the other day which had been published, and I haven't it here with me, published by the N. R. A., showing the personnel and the positions which they had filled in the various industrial and productive enterprises before they assumed their positions in the N. R. A.

Mr. WILLIAMS. It confirmed my statement that a great many of them were drawn from industry, I assume.

Senator KING. And a great many of them have gone back to industry, have they not?

Mr. WILLIAMS. I understand that some have gone back.

Senator KING. So that your personnel has changed considerably by reasons of these persons resigning and going back to assume their positions in the industries from which they were drawn, to use your expression?

Mr. WILLIAMS. I am not in position to point to instances of men having gone back to the industries from which they were drawn, that is men who were detached. Some men were loaned in here from industries, and presumably they went back to those industries. A number of other men were in here not directly from a given industry or unit of industry, but men with prior experience in industry. Where they went back to, if they went back anywhere, I am not in a position to state.

Senator KING. We will put in the record a list of a considerable number.

Senator CONNALLY. Senator, may I interrupt and ask a question?

Senator KING. Yes; assuredly.

Senator CONNALLY. Mr. Williams, is it true or not that the big mail-order houses are not under the codes? I refer to Sears-Roebuck and the other concern similar to it, in Chicago.

Mr. WILLIAMS. They are under codes and under a multiplicity of codes.

Senator CONNALLY. They are under the wholesale code and some other codes?

Mr. WILLIAMS. I do not know how many codes. My recollection is that Sears-Roebuck is reported as under 27 codes. Mr. Smith tells me under a great many more than that. I heard the statement at one time that they were subject to 27 different codes.

Senator CONNALLY. I had understood that they were not subject to the codes. That is the reason I asked you.

Mr. WILLIAMS. That is a mistake, Senator Connally. They are subject to the codes.

Senator CONNALLY. What position, if any, has General Wood, of Sears-Roebuck, with the N. R. A.? Any?

Mr. WILLIAMS. General Wood has no connection whatever with N. R. A. now. He has served at one time as a member of the Industrial Advisory Board of the N. R. A. That is a group of men from industry who furnish industrial advice, as a similar group from the labor groups furnish labor advice, and as a third group from the consumers' representation furnish advice from the consumer point of view.

Senator CONNALLY. It is a sort of unofficial voluntary board of advisers? They have no official power, have they?

Mr. WILLIAMS. They have an advisory relationship, Senator Connally. They are not administration officers. They are not in executive control of anything.

Senator CONNALLY. In other words, if the N. R. A. did not desire to carry out their advice, they would not do it, is that the idea?

Mr. WILLIAMS. It is a possibility that they would not do it, and every day they are failing to carry out the advice of one or the other, because if those three groups ever happen to come forward and stand for the same thing, I want to see what the thing is. [Laughter.]

Senator CONNALLY. There is a public idea out over the country that General Wood is going to be the head of the N. R. A. or in some very high responsible position. I have received a great many letters about it.

Senator HASTINGS. He is the window dressing for the 4,800,000,000.

Senator CONNALLY. I am only talking of the N. R. A. He is supposed to be on the advisory committee of the 4-billion works. These letters referred to the fact that he has switched over from that and is probably going to have something to do with the N. R. A., and I just wondered what it was.

Mr. WILLIAMS. There have been a great many suggestions. I saw a statement in a paper to the effect you are talking about, Senator Connally, but the suggestion I saw 10 times since seeing this other one was that he was to head some advisory group in connection with allocation or expenditure of this $4,880,000,000. But having said that much, let me say I know nothing in the territory except what I have read in the papers. He has never been any closer in N. R. A. than service on the Industrial Advisory Board.

Senator CONNALLY. I had so understood. Thank you, Senator King.

Mr. WILLIAMS. I wish he were.

Senator CONNALLY. I assume that what you say about Sears-Roebuck, that Mongtomery Ward are in the same category. They are also under the codes?

Mr. WILLIAMS. Yes.

Senator KING. Is it not true that these regulations—I have called them "price-fixing" regulations when I read them to you—those things I characterized as price fixing, have been openly or secretly violated, which has resulted in considerable bootlegging in industry?

Mr. WILLIAMS. There has been some of what you call "bootlegging."

Senator KING. And the violations of these practices and provisions which are found in the codes have been rather general, have they not?

Mr. WILLIAMS. If you approach that from the number of violations, they look like they are rather numerous. If you approach it on a percentage basis, Senator King, they lose a lot of their importance. I have to differentiate industry against industry. In some industries, the record of compliance has been approaching perfection. In others it has been moving the other way entirely too fast to suit us administrators of N. R. A.

Senator KING. As I recall your statement to Senator Black, and I may not recall it distinctly or accurately, did you not state that to enforce the price regulations would require cost accounting and a multitude of rules and regulations, and mechanicisms which would require any army of officials, and to accomplish the result is impracticable if not impossible.

Mr. WILLIAMS. Speaking of it as to regulation in manufacturing, as I was when I was speaking in answer to Senator Black's question, yes, for this reason. You write a simple provision——

Senator KING. You gave your reasons then; I do not care to have them recapitulated unless you feel it is necessary.

Mr. WILLIAMS. I was going into new territory in further answer to your question.

Senator KING. I am interested in getting your idea.

Mr. WILLIAMS. Thank you, Senator. I do not want to kill time, and yet I wanted to illustrate that in one or two sentences. Suppose you have a provision that nobody shall sell below cost. The first question is, "Whose cost are you talking about? His cost or the average cost, or his competitor's cost, or a theoretical cost assumed to be the perfect cost worked out on a perfect accounting system?" What are you talking about? is the question we were first confronted with. That is what made this uniform costing system provision necessary in the codes, because we have to have some costing basis to relate a provision like that to.

Senator KING. It would be absolutely impossible, would it not, to control the cost of all the thousands and tens of thousands and hundreds of thousands of commodities and products that come from manufacturers and producers throughout the United States?

Mr. WILLIAMS. I have regarded it as perfectly impracticable. Let me add one other thing. You understand I am speaking to my personal opinion. There are a great many people who think that it is physically practicable there to do it, Senator King.

Senator KING. It has been physically impossible for us to find the cost of operating railroads, notwithstanding the strong law which has been enacted, and the setting up of a means for doing it which has cost the country 10 millions of dollars.

Mr. WILLIAMS. It has taken the Treasury Department 18 years to work out a system of telling what a man's income is, and it is not a perfect system yet.

Senator KING. Is it not true that while the codes were under preparation, that prices immediately rose in anticipation of price-fixing provisions that were found in some of the codes?

Mr. WILLIAMS. I would not assume the burden of saying that there was a perfect and 100-percent cause and connection. I assume that contributed to it. I think other things contributed to it, such as the prospect of general recovery.

Senator KING. The cost of price fixing, the effect of price fixing increases the cost to the consumer, does it not?

Mr. WILLIAMS. Price fixing as such, the [illegible] level of the price, does, but we have to keep in mind all the way through this situation that by the service of the primary objects of these codes and this N. I. R. A., we were deliberately forcing prices up, in this country, requiring the payment of more wages and the working of shorter hours and the elimination of cheap child labor, all of which was a compeller on the price level and had to lift it.

Senator KING. Of course increased cost of goods always rests upon the consumers?

Mr. WILLIAMS. Assuredly. Let me say it this way—to the extent that the increased cost of goods is effectuated through the payment of greater wages, the consumer, including all of us, and therefore receiving those wages has a credit against that cost.

Senator KING. Is it not true that the cost of production varies in the various units in every group as well as in the groups themselves?

Mr. WILLIAMS. I know no cases where they do not vary.

Senator KING. So that if you attempt to establish by rules and regulations, uniformity of prices, you are running counter to all economic laws, and to all customs and practices and to the experience of mankind, isn't that true?

Mr. WILLIAMS. That is a lot of territory. You are running counter to a great many things.

Senator KING. Strike out the experience of mankind and leave in the other. Are not the prohibitions prohibiting sales below average cost in the interest of the manufacturer against the interest of the consumer?

Mr. WILLIAMS. That would have to be tested, Senator King, by the condition in the industry in which it was thought to serve by that provision.

Senator KING. You can answer that "yes" or "no", can you not?

Mr. WILLIAMS. I would answer it "no", that it is not always in the interest of the manufacturer and against the interest of the consumer. If you break it down, I will have to answer it differently.

Senator KING. Any provision prohibiting sales below cost is in the interest, is it not, of the manufacturer?

Mr. WILLIAMS. Not necessarily.

Senator KING. It is against the interest of the consumer, is it not?

Mr. WILLIAMS. It is against the interest of the consumer. That is the breakdown that I was talking about.

Senator KING. So that it is advantageous to the manufacturer——

Mr. WILLIAMS (interposing). It is against the interest of the consumer generally. It may be in the interest of the consumer who happens to be an employee of that particular manufacturer and would be benefited under the corresponding provision, because you do not find these provisions that relate to price severed from the provisions that relate to wages.

If I am an employee of a concern that bakes hams, for instance, and am enjoying a low wage and eating ham too, you come along and adopt a code in which you have the companion pieces, one of which marked up my pay, and the other which makes a provision with respect to selling price, it is entirely possible that I as an employee may benefit more under the raise in wage than I suffer under the raise in price, but putting it in the broadest territory, the consumer generally, with the like they [illegible]

Senator [illegible] (interposing). Loses?

Mr. WILLIAMS. Loses. He pays. Put it that way.

Senator KING. Is it not true that when prices are set to cover the costs of all members of the industry, which seems to be the objectives of the codes if I understand them and interpret them right, which net profits are assured above the marginal producer in industry?

Mr. WILLIAMS. That is the very wide territory of whether this Government wants to underwrite the inefficient in industry or business.

Senator KING. And that has been the tendency of the codes, and one of the purposes of some of the administrators too. When I say administrators, I mean deputy administrators. I do not include you in the list, Mr. Williams.

Mr. WILLIAMS. Thank you, but I am not in position to say that that has been the purpose.

Senator KING. That has been the result, has it not?

Mr. WILLIAMS. I think the number of cases in which that has been the result is so small as to be entirely negligible in this situation, because I think there has been a bona fide attempt to handle those things, to serve these primary purposes and to stop right there and

to not go beyond. I think in connection with that, there has been a full recognition, and I cannot speak for anybody else, because from what I have observed of this principle, that this Government cannot undertake to underwrite everybody who is in any business, whether it be the practice of law, or dentistry or the operation of the United States Steel Corporation, for the reason that if you will make Government guarantee to all units in any given industry a living return on their investment in that business, that for the least efficient, then you have made the moderately efficient work on a basis of margin that is too wide, and you have made the extremely efficient work on an inordinately wide margin.

Senator KING. Is it not true that various proposals which have been made by some of the code authorities and by manufacturers and those who built the code for the establishment of some of these practices or the validating of them, has the suggestion been made by them that the Government should approve or support or enforce prices that would guarantee net profits to the private producers at the expense of the public?

Mr. WILLIAMS. Nobody ever made that insistence to me. I am not in a position to say it was not made, but not to my knowledge.

Senator KING. Is it not a fact that those businesses who were most insistent upon price fixing devices in the codes and in the adoption of codes, contended or suggested that the manufacturers and producers should have profits guaranteed by the Government even though the public had to pay for the same?

Mr. WILLIAMS. I am not in a position to say that that insistence was made. Neither am I in a position to say it was not made. It was not made to me.

Senator KING. Are not price-fixing devices the first steps toward a monopoly or monopolistic control of prices and commodities?

Mr. WILLIAMS. I do not think so.

Senator KING. You do not think that price fixing provisions in our industrial life, that is, governmental price fixing or private-price fixing, tends to increase prices and tends to strengthen monopolistic control and monopolies in industry?

Mr. WILLIAMS. I think on the other hand it is one of the greatest preventatives to the development of monopolistic position, because I agree with what Mr. Richberg said from this stand the other day, that the cutting of price has always in this country been one of the most effective tools for the building of monopoly. The strong, not limited at all as to the price to which he can reduce his product and financially able to drop his price to where he can take the business, whether or not starves the small meanwhile, can, when the small is out of the way, put the price up.

Senator KING. The Sherman Antitrust Law and the Clayton Act were aimed against the monopolistic tendencies and practices of many of the industries of the United States, especially the steel trust and the oil trust and others; is that not true?

Mr. WILLIAMS. I understand they were directed against this kind of thing, but I am speaking to the narrower territory of what you can do on the price there, and I am standing to this proposition, that when you fix it so that the strong and the weak together have to stay above a certain level, and I am a mighty weak price fixer as you know, but when you fix it so that they cannot get below that, you have cut

off one of the strong arms of the strong in reaching for the business of the weak. There is not any doubt about that.

Senator KING. Is it not true that the right once accorded to any industry to establish a price is a very long step toward setting prices that will yield larger prices?

Mr. WILLIAMS. Setting the price or setting the price in collusion or in agreement with other people?

Senator KING. It could not set a price if it was a competitive system and maintain it, unless it had a patent.

Mr. WILLIAMS. All of us units in business set our own prices. That is the part of your question that I was dodging. There must be and there should be I think a full power in anybody to set his price anywhere where he wants to set it—speaking to the individual units now—except as it may be necessary for the Government in order to serve some socially valuable purpose, to put a level in there below which he shall not go, because going below it would come under the classification of these unfair practices destructive of the competitive equity in this country. So much for the individual's rights to set his price.

Now, going to the other territory, when you get into territory where all of the units in an industry can get together and fix not individual prices but group price, then you cannot criticize them any more than I feel disposed to.

Senator KING. Is it not a fact that if it is possible to fix the price at one point, it is likewise possible to fix the prices at other points?

Mr. WILLIAMS. By "points" I am not sure that I understand you.

Senator KING. Levels?

Mr. WILLIAMS. Levels.

Senator KING. That is true, is it not?

Mr. WILLIAMS. If it is possible to fix at one level, it would also be possible to fix at another.

Senator KING. If by law, agreement or custom you are permitted to fix at one price, obviously you would be permitted to fix at other levels?

Mr. WILLIAMS. If we are speaking to the codes, there is all the difference in the world—

Senator KING (interrupting). I am speaking generally.

Mr. WILLIAMS. Speaking generally?

Senator KING. As a business proposition.

Mr. WILLIAMS. Letting all of the units of an industry get together and fix the price?

Senator KING. Yes. If they can fix at one price, they can fix at another?

Mr. WILLIAMS. If we were loose to do that, yes. The answer would have to be yes, but there are a great many qualifications lying along there in practical terms.

Senator HASTINGS. I think Mr. Williams has made it perfectly clear, but I will have to inquire again. As I gathered from Mr. Williams' testimony, the bad things about monopoly are two. One is the strong industries get together and cut the price so as to drive out the small industry and possibly ultimately take it over. That is the first monopoly that you spoke of?

Mr. WILLIAMS. That is the danger inherent in strength.

Senator HASTINGS. But there is another one that is even more effective than that, which I understand you condemn, and that is where

the entire group gets together and raises the price to an unreasonable amount. Was that what you said?

Mr. WILLIAMS. If it were within contemplation or if it were a fact, yes, I would be crying out loudly against that, but what I am trying to say is that there has never been more than a minimum of that in this situation. I do not know anybody who is claiming that an industry should be permitted to get together and name any kind of price it wants for the product of that industry.

Senator HASTINGS. Is there anything in the codes which prohibits it from being done?

Mr. WILLIAMS. Yes. The antitrust act, in the interpretation of all of us whose opinions I know in N. R. A., is never regarded as suspended beyond that minimum of suspension necessary to enable the effectuating of certain provisions in the code, making them workable and effectuating those purposes.

Senator KING. And those who were to interpret the effectuation are those who are interested in the production, aren't they?

Mr. WILLIAMS. No.

Senator KING. They are the ones to be the judges?

Mr. WILLIAMS. No.

Senator KING. Pardon the interruption, Senator Hastings.

Senator HASTINGS. And my understanding is at the present time if a situation like that should arise, the persons belonging to that particular code would be just as guilty now as they would be prior to the enactment of this N. I. R. A.?

Mr. WILLIAMS. That is true except as N. I. R. A. officials may have made a mistake in approving a certain provision in the code, and I am not sure it is not true even if they did make the mistake, because the antitrust law might override their making a mistake.

I mean this, these things do not work easily. If I may come out negatively first, a group in an industry might get together and decide exactly what they want to do, and then come up for a rubber stamp approval on it; but that is not the way. They do work out what they think would comply with this act and what they would like to have under this act, but that is only the first step. When that comes to the N. R. A., and this has always been true, that proposal is subjected to the closest scrutiny in the N. R. A., both to see whether it is calculated to serve the purposes of N. R. A., the purposes which N. R. A. is trying to accomplish under this N. I. R. A., and further to see whether it leads into any of these dangerous territories that we are speaking critically of now.

So, whatever the industry proposes, is screened officially in N. R. A., and there is screened out of it all of these things, if we have discharged our duty fully, that permit these wrong practices some of you gentlemen are referring to. After we have done that, the industry is protected against the antitrust law to the extent that our action in approving certain provisions that they write in there suspends the antitrust law, but all of this other territory is utterly unaffected by the code, because the code is powerless, as we think, to suspend the antitrust laws beyond the minimum extent provided in this act that the N. R. A. shall be incapable of suspending them except in order that provisions may be written that will drive through to the realization of these declared purposes.

Senator HASTINGS. Does not the N. R. A.—so far as it affects the steel business—is it not a practical monopoly?

Mr. WILLIAMS. I do not so regard it, Senator Hastings, at all.

Senator KING. May I interrupt you? Does not the record of the Federal Trade Commission and their findings and conclusions practically confirm that view?

Mr. WILLIAMS. Senator King, if you will excuse me from going into a discussion of that thing and let me make this admission. There are several folks in N. R. A., and particularly Mr. Richberg, who know 10 things, even 100 things with respect to the steel basing point, because of long period of time with it ——

Senator KING (interrupting). I withdraw the question.

Mr. WILLIAMS. I am not holding out on you. I will give you what I have, but I am telling you that it is not very much.

Senator KING. Having read the report, perhaps some of us have a little more than you.

Mr WILLIAMS. I have been through the report and through our own report, but I have not studied them.

Apropos of some of Senator Hastings thinking there, let me say again that there is not anything in an open price provision in a code that fixes the price. I hope you gentlemen have it in mind that an open price provision in a code is not more than this, that any seller shall post with varying degrees of breadth of publicity for the fact posted, the price that he is holding on certain articles.

Senator COUZENS. May I ask why that is done? In my judgment that is one of the worst provisions of the codes. I do not see why they have got to post those prices or why they should post them.

Senator KING. Before you answer that, if I may supplement, if you will pardon me. Why is it that nearly every bid that has been received by the Government, for cement and steel and many other commodities, has even the same even to the 49 cents. So many millions and so many thousands and even 49 cents. How is it that there has been so much unanimity?

Mr. WILLIAMS. It seems to me that that happens through each taking the other one's open price.

Senator COUZENS. I would like to get an answer to my question. What is the purpose of putting that in the codes?

Mr. WILLIAMS. Senator Couzens, there is an argument that it is desirable—I am not going to weigh the arguments but just state them—there is an argument that it is desirable that the purchasers of any commodity in this country should know what that commodity is moving to others at, at what price it is moving at. That is the open price.

Senator COUZENS. That may be true so far as a trade-marked article is concerned, but it has always occurred to me that there is a great difference between a trade-marked article which has a branded price and goods sold in bulk in commodity form to manufacturers for reproduction or consumption.

Mr. WILLIAMS. There would seem to be a different base there to work on.

Senator COUZENS. I did not hear you.

Mr. WILLIAMS. There would seem to be a difference in one application as against another, and yet those who contend for open prices make the full-length contention to the effect that all of us, each of us is entitled to know what each of the other of us is paying for whatever he buys. That is the basis behind that.

Senator COUZENS. Describe to me any justification of that, and I wonder if you justify that. I am just asking for your point of view.

Mr. WILLIAMS. My attitude toward it has been this: I have proceeded along a voluntary policy in this code business a whole lot, and if an industry comes forward and says that a majority of the industry is in favor of open-price publication or open-price clause, I have been willing to say, "Well, all right with me if you want it." That has been about my relationship to it.

Senator COUZENS. I am asking you whether you believe in it; I am not asking you what you did.

Mr. WILLIAMS. That takes me into each individual industry and into an investigation as to what ends would be served by the introduction of an open price policy in some industries. In some industries you will find ends that look like legitimate ends that would be served by an open price policy, and in others, in my thinking, you fail to find important ends that would be served.

Senator COUZENS. Could you give us an illustration of these two different types of cases?

Mr. WILLIAMS. In the first, where you have a situation with a number of units in a given line the product of which, for instance, is sold on an annual basis, a contract for a year's supply, the argument is made, and it has somewhat of plausibility and a little less of acceptance, but acceptance nevertheless on my part, is this: That hurt can come to the public interest if some operator in that situation under a secret price might cover at one fell swoop in 5 minutes some day, a high percentage of the requirement of that product for this whole country on a secret price and without the knowledge of anybody else, and thereby build up his production requirements to excessive heights and leave a number of other units without capacity to employ even a normal number—remembering that we are talking about sustaining employment and sustaining purchasing power in this country. There is plausibility in open price as applied to that sort of situation. I think that plausibility is sufficient to justify taking the risk that is in the end that the opposition argues that if you provide for price posting, you are just letting everybody know what everybody else is doing, and if some fellow starts to get out of line with the rest, you are giving the rest an opportunity to go and get hold of him and make a Christian out of him and get him to withdraw the lower price. That is the argument contra.

My own position on it is that if there is not some purpose to be served, constructive, as tested under the aspirations of this act, it is a very good thing to avoid. If, on the other hand, there is some constructive purpose that can be served by permitting it, I would take all the risk if there is any risk, and I am not sure there is, that is urged by this second school that is referred to and go forward and approve open prices. I do not know of any rule of reason, Senator Couzens, why prices should be secret. That is where I have to start from.

Senator COUZENS. That seems inconsistent with your testimony the other day in which you said that if an industry could not meet the demands of N. R. A. they should go out of business.

Mr. WILLIAMS. I would not plead guilty to having said that. I think if you will let me correct what I said——

Senator COUZENS. That is the impression I got.

Mr. WILLIAMS. I said that there were certain choices that had to be made by the Congress as to which of certain things they were going

to serve, and among other things said that if the Congress was going to impose a minimum wage on everybody, and if there happened to be units in that industry which could not pay that wage and still stay in business, then the Congress had to elect as to whether it was going to serve the socially desirable end of having a satisfactory wage and losing that unit out of industry, or whether on the other hand it was going to serve the purposes of treating that unit in industry at the sacrifice of that wage.

Senator COUZENS. I understood that. That was perfectly clear, but the conclusion to be reached from that statement was that if an industry could not meet those minimum requirements it should go out of business; is that correct? If Congress so elected.

Mr. WILLIAMS. If Congress so elects, that is right.

Senator COUZENS. And you said at the same time that this whole business had to be looked at from a national viewpoint, is that not correct?

Mr. WILLIAMS. That is correct.

Senator COUZENS. So far as the maintaining of minimum standards is concerned, it had to be looked at from a national standpoint. Now, I ask if in the hypothetical case that you just stated about the industry going in and getting all of the business at a low price, whether or not from a national standpoint they did not employ the same number of men to produce those goods as if the price were posted and everybody got a chance at it?

Mr. WILLIAMS. Presumably that is so.

Senator COUZENS. So that from a national standpoint, then, what difference does it make, using your language, just what difference does it make who makes the price?

Mr. WILLIAMS. It is a question of how much dislocation the Congress wants to stand for in a situation like that. If you concentrate 5 times as much production at 1 point as is normally there, and in doing that take production almost entirely away from 4 other possibly remote points which is normally there, then you have effectuated certain dislocations which in themselves may be undesirable, although the total effect on the purchasing power may be nil and the total effect on unemployment may be nil.

I am not trying to put myself over behind that bench and make a decision of those questions. I am only analyzing what is involved. You may want to tolerate that dislocation.

Senator COUZENS. The dislocation takes place perhaps to a greater degree in the case that you have just stated, but the dislocation takes place nevertheless if an industry has to close down because it cannot maintain the minimum standards, and then there is a dislocation, is there not? Is that not true in some of the small communities of less than 2,500 people?

Mr. WILLIAMS. Yes. And, apropos of that, I want to go back to my question that you quoted of the national application. I am afraid from the way the Senator asked that question, that he had in mind that in using the phrase "national" I entertained the view that these codes had to be extended until they covered everything in this country, everybody, everywhere, no matter what he is doing. I go back to it to deny that that is my position and to say——

Senator KING (interrupting). Is not that the interpretation of Mr. Richberg and others in the codes?

Mr. WILLIAMS. I did not get that interpretation; assuredly not. What I meant by "national", if I may hang there long enough to be sure that I am not being misunderstood, I was speaking out of this atmosphere. There is no such thing as taking a given industry and enforcing a code upon it in one section of the country and leaving it unenforceable in another or unenforced in another, without a result that is unfair to those who are complying, those against whom you are enforcing.

Now, without remembering the exact thing I was talking about at the time, I think I was talking about the necessity of enforcement all over to protect those who are going along with us, but I do not mean, Senator Couzens, if you got that impression, to leave the impression that I thought this thing was to blanket everything. I do not think that.

Senator COUZENS. You mean to blanket everything in the specific industry, do you not?

Mr. WILLIAMS. I mean that.

Senator COUZENS. That is what I am referring to.

Mr. WILLIAMS. If Congress is going to make a code effective in a given industry, it has got to make it effective to all of the industry, saving this one exception. I have always thought that there are certain minimum operations that can be eliminated.

Senator COUZENS. Now, go back to this price posting again. Is it practicable to post prices with the different elements that enter into the cost of production and the sales terms and buying terms, when you have to consider volume and credit and seasonal? Is it practical to post prices with all of those elements entering into it other than the agreed price?

Mr. WILLIAMS. I think it is perfectly practicable to post prices no matter what a cost situation may be, because in the posting of prices there is only a single question, "What are you willing to sell the article for?" It does not make any difference whether it cost you two prices or half price. The single question presented in a price-posting provision is, "What are you willing to take for the article? What are you offering it to the public for?"

Senator COUZENS. Under what procedure is it that the Government Printing Office in advertising for bids recently received 49 bids of the exact figure just as the Senator from Utah pointed out awhile ago, where the figures were all exactly the same? Is that accomplished by the purpose of some one person posting his price first, and then all automatically and willingly following in line?

Mr. WILLIAMS. Without having the details of the provisions of that code in mind, it is easily possible, and I assume it is a fact that that came about through there being a price posted below which, under a code provision, nobody would sell. I assume that is so. I am not speaking from direct knowledge.

Senator COUZENS. It must have been so, but what is the procedure? Did somebody first post a price and everybody followed willingly in line, or did they all get together in advance?

Mr. WILLIAMS. The ordinary way in which the thing works is this: Anybody can post his price. Assume a code provision that nobody shall sell without posting his price.

Senator COUZENS. I understand that, but I still do not understand how they all got exactly the same figure.

Mr. WILLIAMS. That is what I was going to explain in one sentence. There is then on a bulletin board somewhere or filed in somebody's office a list in which appears all of the list prices. If you are going to bid on a contract, and you know there is the possibility of getting a big contract, the first thing you are interested in is what prices are posted. You look at the record, you get it by 'phone or telegram, and the lowest fellow on there is $27.49 per unit of that article; that is his posted price. That means to everybody else that he is standing ready to bid at that price.

Senator HASTINGS. Is there anything in the code which prevents that fellow from naming a price of $27.48?

Mr. WILLIAMS. He may name $15 if he wants to, but he must post that $15 price the minute he names it.

Senator HASTINGS. I do not see that that is any answer to the question.

Senator COUZENS. I do not, either. I cannot get that, and Mr. Williams, being a business man, I do not see how he can get over the hump of the difference between the cost of production and the credit and the volume and seasonal demand. As you well know, the power companies, for example, make a very low price for the industries to take them over the hump of the day when there is very little use for current for domestic consumption.

Mr. WILLIAMS. They fill their valleys.

Senator COUZENS. What effect does the price posting have in the attempt to fill their valleys?

Mr. WILLIAMS. He is perfectly free to post any price he wants to at any time.

Senator COUZENS. Is he not fearful of doing it because he would drag the others down and not get the business anyhow?

Mr. WILLIAMS. I believe he is.

Senator COUZENS. So that any way you figure it, it is the same thing.

Senator GEORGE. The price posting has been done at least with the hope of keeping the price up.

Mr. WILLIAMS. I assume that a great many people who were favorable to price posting were of the opinion that it would not be hurtful to prices.

Senator KING. They would be prosecuted under the code if they went below.

Mr. WILLIAMS. If you have a provision against selling below the posted price, you have a violation.

Senator HASTINGS. If I would not interrupt Senator King's inquiries, I would like to ask you this one question: Whether in your judgment the N. R. A. has been successful enough to warrant the Congress in extending it in its present form for another 2 years?

Mr. WILLIAMS. I think assuredly N. R. A. has made a definite and a valuable contribution to recovery, and broader than recovery, to general conditions in this country. I think with certain modifications it would be exceedingly valuable to have it extended for a further period.

Senator HASTINGS. You think a majority of the people in this country are in favor of the N. R. A. in its present form if it were put to a vote, for instance, and you could get everybody entitled to vote, to vote on it, do you think it would receive a majority vote of the people of this country?

Mr. WILLIAMS. That is more or less of a political guess that I am not good at, but I think the answer is yes, that they are favorable to it.

I want to add to that answer, this: I think you will find great segments of public opinion in this country that want it changed in this respect and others that want it changed in that respect, and others in another, and that out of all those criticisms and attitudes toward the N. R. A., there is to be found what we might call the highest common divisor of all of that opinion, even the critical opinion represented about N. R. A., and that it would be supported by the great majority of the people of this country. But I am admitting, Senator Hastings, in saying it that way, that I am turning a great deal from your phrase "in its present form", because against various features of its present form, there are groups that are critical. My idea of the furture for N. R. A. lies along lines of finding that thing I referred to as the highest common divisor, common to a great majority of the opinion of the people of this country adopting that as N. R. A., and in adopting that you would have eliminated an enormous part of this criticism and this lack of support.

Senator HASTINGS. Is there anything in the present act that prevents the present administration from eliminating those things that they think ought to be eliminated?

Mr. WILLIAMS. The powers of the Administration under the present act are very broad indeed, but the question of eliminating a good many of these things presents a good deal of difficulty.

Senator HASTINGS. I am trying to find out whether the Administration is trying to impose upon the Congress the whole responsibility of changing this act, or whether it is willing to take the responsibility with all of its familiarity with it, and tell the Congress distinctly what it ought to do.

Mr. WILLIAMS. There are two phases to the answer I would make there. The N. R. A. at this stage of its existence, with its charter expiring June 16, necessarily awaiting information as to what that charter as renewed will be, and what N. R. A. powers, and what the expectations of N. R. A. will be under that new charter. That is true as to our status just now, and relating in a way to your question, which is really why we do not go ahead and turn the earth upside down in certain respects—we do not think it is wise for us on the administration of the N. R. A., with the act expiring now in 3 months, to go and try to turn the earth upside down.

Senator KING. May I ask, Mr. Williams——

Mr. WILLIAMS (interrupting). With respect to the second phase of your question, if I may finish, Senator King——

Senator KING. Yes, certainly.

Mr. WILLIAMS (continuing). On the question of whether we are wanting to pass the responsibility anywhere or not, we recognize fully that the last word is by the Congress, that we took our charter from the Congress, and it is for the Congress to determine what our powers shall be and what expectations shall be indulged with respect to the N. R. A. At the time we are here before you with our full recommendations as to what lines the Congress should follow, in our judgment, in giving us that new charter.

Senator HASTINGS. I must confess that I do not quite understand what they are.

Mr. WILLIAMS. There is a full set of recommendations transmitted here.

Senator HASTINGS. Maybe I have not seen them.

Senator KING. Mr. Williams, you knew, and the code authorities knew, and the N. R. A. knew, that the act gave them 2 years of life. It seems to me that they had ample opportunity to put into practice the measures which my friends indicated were proper, knowing that their life would expire in 2 years. Why didn't they do those things? Why wait until the last minute to give some reassurance to the public and then to come to Congress and say, "Give us another lease of life for 2 years."

Mr. WILLIAMS. It was not a matter of putting off until the last day, Senator King. This thing was branded as experimental to start with.

Senator KING. Inherently it had so many vices—and I do not use the term offensively—that it was impossible, was it not, to put it in shape——

Mr. WILLIAMS (interrupting). Inherently it was leading us into so many new territories where there was neither the experience nor the precedent, that it had to travel under the character of experimental. All right; so much for that.

Now, talking of the 2-year term: 18 months of that 2-year term, approximately, went to the task of erecting these code structures and setting up these provisions, leaving about a quarter of that term for observation of the workings of the various things. Now, your structure is erected and the thing is in operation, but the time for observing and testing out experimentally this, that, or the other, and its effect upon the business in this country, or employment, or whatever angle of life you want to test it against, has been eliminated. That is the basis for the recommendation that the act should be continued substantially as is with certain recommended changes, in order that there may be a further period of study to determine what is valuable and what is not valuable.

I do not know anybody in high position in N. R. A. that wants to retain anything in N. R. A. that is not serving some purpose. I do not know anybody in high position in N. R. A. that wants to get forward into the regulation or handling of a whole lot of things just for the sake of handling a whole lot of things. We are earnestly proceeding in finding out where the values lie, what provisions serve valuable purposes and what do not, what lead into dangerous territory and what do not lead into dangerous territory.

Senator KING. Senator Hastings, have you finished?

Senator HASTINGS. Yes.

Senator KING. And have you, Senator Couzens?

Senator COUZENS. Yes.

Senator KING. I would like to resume. If prices are to be fixed or arranged to cover cost of production, may not the ingenuity of accountants or other devices provide a definition of cost which will yield monopoly profits, and have we not discovered that in our income taxes?

Mr. WILLIAMS. That was the reason that there was recognition early in N. R. A. of a perfectly uniform, officially approved and an approved method of costing in order to keep every Tom, Dick, and Harry that wanted to write a cost system to serve its own purposes from so doing.

Senator KING. Under N. R. A. is there not what might be called a new kind of monopoly, a monopoly in which all members of the industry participate?

Mr. WILLIAMS. I do not think there is the beginning of any kind of a monopoly with N. R. A.

Senator KING. Which has drawn together in the codes and in many of the large manufacturing organizations, substantially all who were engaged in those organizations?

Mr. WILLIAMS. For purposes of working and forming and administering or even perhaps working and administering these codes; yes.

Senator KING. May there not be a monopoly of an industry as well as of a single concern?

Mr. WILLIAMS. There can be, of course.

Senator KING. Do you think it possible for any single concern or a very small group of concerns engaged in private business to secure public approval for price-fixing provisions?

Mr. WILLIAMS. My own personal opinion is no.

Senator KING. Is it not a fact that the efforts of an entire industry or such parts of an industry as are organized are now being directed toward asking for approval, and they have been directed toward asking for approval of just such provisions as would be deemed anti-socialistic attempted by individuals or very small groups?

Mr. WILLIAMS. I do not think that is so.

Senator KING. Do you not think that the activities under the N. R. A. and the record of the N. R. A. justifies an affirmative answer to that question?

Mr. WILLIAMS. I do not think so, and let me make this observation, that if anything done is being permitted to work out to the kind of result that is suggested by your question, then I say that administratively that can be taken care of.

Senator COUZENS. These questions of the Senator from Utah suggests to me that I did not get an answer to a question that was propounded here the other day, whether a new industry had to get consent from N. R. A. to start up?

Mr. WILLIAMS. It does not, except in a very few codes. There are only two that I know of, the ice code and the cement code. There is a provision under those two codes under which new producing units formed will get a kind of permission to come into the business. I said there were a few of them—I remember those two. I do not mean to deny that there were more than two.

Senator COUZENS. If those provisions were out of the codes and anybody with capital desired to enter a business, he could do so and there would be no monopoly as suggested by the Senator from Utah.

Mr. WILLIAMS. No.

Senator COUZENS. So that in effect that had to be eliminated so that new blood and new industry might start up without any curbing upon the part of the N. R. A. insofar as minimum provisions of the codes were provided for.

Mr. WILLIAMS. In the abstract, especially, that kind of a provision on its face tends to support monopoly in the group that are already in the business. So much in the abstract, but let me add this—when you carry a lot of these things from the abstract to their practical application, you find an entirely different situation, and again the question reverts to what you are trying to serve. If you have got

an overbuilt industry in which every unit is impoverished to the point where nobody can pay wages and observe hours, and your prime object is to get wages up and hours observed, they may orient your position to the service of a new thing, those social values, even at the expense of dallying with a thing for the time being that prima facie in the abstract sounds like the encouragement of monopoly.

I am not appearing for or against that particular provision, but I am suggesting that all of these abstractions have got to be related to the specific situation to be served in the industry affected, and when we carry ourselves there, we administrators have to orient our position sometimes and appear to approve of something that theoretically in the abstract we do not believe in, in order that we may carry out the commission given us to serve certain social ends under this act.

Senator COUZENS. Let me give you the hypothetical case I have in mind. It is stated that a number of industries—one I have in mind which I will not mention because it might cause an unnecessary criticism—are very backward in their development. They have a lot of antique and out-of-date equipment and they are carrying a lot of obsolescence on their books, and a group of us, for example, determine that society should not carry that burden of paying a return upon these antiquated machines and these antiquated plants, and these obsolescences, and we determine to go into a business which is in competition with this antiquated industry, and we are perfectly willing to maintain minimums which we are discussing, the wages and the hours and all the other socially desirable attainments and yet we are prohibited from doing so and giving to society the benefit of our capital and our initiative and our ingenuity because some governmental agency determines that we should not. Is that justified?

Mr. WILLIAMS. Answering that in the abstract, as stated, I do not think it can be justified. Let me go one step further. If the Congress of the United States under those circumstances and as directed to that specific industry, says to the administrators of N. R. A. that in spite of that fact, "You have got to bring it about that wages will be paid and hours will be observed in that industry", and that in spite of the violation of this principle which you and I are standing for in the abstract in that territory, then from an administrative point of view we are cut off from entertaining the abstraction and have to pursue the practicality of the situation.

That is the reason I have said so frequently that what we need, the folks that sit in the kind of chair that I have been sitting in recently, is your election, the election on the part of the Congress as to which of that pair of conflicting ends they desire to have served. We won't have any trouble administratively. But once Congress speaks clearly as to what it wants to do on these cross-roads positions, we will know. But we do have a great deal of trouble, and as long as you have not told us what to do, our minds go down the one channel and then down the other.

Senator COUZENS. We are trying to get your advice. I am trying to get your advice as to whether you justify the obtaining from a governmental agency of permission to enter business.

Mr. WILLIAMS. I think it is a rotten principle. That is what I think about it, but I am still saying the point that if you tell us——

Senator COUZENS. (interrupting). Do not put on too many qualifications.

Mr. WILLIAMS. Senator, I am trying to be just as frank as an open-faced watch, but I am trying to give you the whole picture.

Senator COUZENS. Some of the newspaper men have said that it is difficult to get an answer of you because you put in so many qualifications of this kind and that.

The CHAIRMAN. They can write that as an answer, that it is a rotten proposition. [Laughter.]

Senator KING. Then you did not approve of the arresting of that poor chap, I think in New Jersey because on his farm or on his place he wanted a little ice for his family and the preservation of some of his products and he built an ice plant and he was arrested. You do not approve of that?

Mr. WILLIAMS. I do not know the specific case, but I do not like governmental control of the question whether or not an American citizen shall go into one line of business or into another.

Senator KING. I would like before we adjourn, to put into the record this situation. I asked Mr. Richberg to give me some of the letters which have been sent out under the Government frank. I received one reading as follows. It was addressed on February 21 this year to—I will leave the name blank—and the letter reads:

GENTLEMEN: The code finance committee, a duly authorized agent of the code authorities for the scrap iron, nonferrous scrap metals and waste materials trade, reports that you have not paid your equitable contribution to the cost of code administration. Under the provisions of the code, payment of an equitable share of this cost is mandatory. An examination of our records indicates that the code finance committee has complied fully with the requirements of the several administrative orders relating to the collection of contributions.

Most of the members of your industry have already complied in this respect and it is only fair that the remainder should similarly contribute. You must realize that in the absence of financial support the code authorities cannot function efficiently and, by the same token, any expenditure of time on the collection of contributions hampers their administration of the other provisions of the code.

Only those members of the industry who do contribute are entitled to use N. R. A. insignia, to bid on Government contracts, or to participate in code authority activities. Continued failure to cooperate will result in the loss of these privileges with attendant publicity, and the Administration is prepared, if necessary, to authorize and assist the code authorities in the institution of civil proceedings to collect the amount due.

It is our belief that you desire to cooperate, and, therefore, we are withholding action for the time being in order that you may have an opportunity to communicate with the Code Finance Committee for the Scrap Iron, Nonferrous Scrap Metals and Waste Materials Trade, 1475 Broadway, New York City, and adjust this matter.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

Senator BLACK. Mr. Chairman, before you adjourn, I would like to ask about a prospective witness. Mr. Williams, how many members of the N. R. A. board are there? Five?

Mr. WILLIAMS. There are seven members of the board. There are five members appointed directly as members. Then there are named a legal adviser and an economic adviser who are then characterized also as ex-officio members of the board.

Senator BLACK. Is there one member of that board who is charged peculiarly with the responsibility or who has assumed the responsibility to some extent of trying to look out for the consumers' interest?

Mr. WILLIAMS. There is a man on the board who prior to his naming to the board was chairman of the Advisory Council and a member of the Consumers Advisory Board, Dr. Walton Hamilton.

Senator BLACK. Has his name been given as a prospective witness, may I ask?

The CHAIRMAN. The committee that was suggested on the procedure to save time had only fixed about six names, I think in the beginning, but that is only the beginning of the work. Dr. Hamilton's name will be put on, and if it is desired to hear him, he can be called.

Senator BLACK. I would like to have Dr. Hamilton here.

Senator KING. May I say to the Senator that I have statements made by 6 or 7 of the Consumers Council, if that is the proper name, which were made at the price hearings on January 9, 1935. I would be very glad to let the Senator read the statements. I am going to have them put in the record before we conclude our work here.

The CHAIRMAN. Are there any other witnesses? Have we finished with Mr. Williams for the present? I believe we are all very anxious to proceed as rapidly as possible.

Senator KING. I have a few more questions to ask Mr. Williams.

The CHAIRMAN. You will please be here in the morning, Mr. Williams, and we will be through with you as quickly as possible, and I hope, Mr. Hillman, that you can be here in the morning, and that we can finish with you, and that Wednesday morning we can then take Mr. Darrow.

Mr. WILLIAMS. I hope that I may be permitted to put into the record a few statements that I started to put in the other day.

The CHAIRMAN. You may do that.

The committee recesses now until 10 o'clock tomorrow morning.

(Whereupon, at 12 o'clock noon, the committee adjourned until Tuesday morning, Mar. 19, 1935, at 10 o'clock).

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

TUESDAY, MARCH 19, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, Barkley, Costigan, Clark, Lonergan, Black, Gerry, Guffey, Couzens, Keyes, La Follette, Metcalf, and Hastings.

Also present: Mr. Donald R. Richberg, Executive Director, National Emergency Council; Mr. Blackwell Smith, acting general Counsel, N. R. A.; Mr. Leon Henderson, economic advisor, N. R. A.

The CHAIRMAN. The committee will come to order. Senator King, do you wish to proceed in further questioning of Mr. Williams?

Senator KING. Before proceeding with the examination further, I call attention and want to put into the record a part of an article by Mark Sullivan appearing in yesterday morning's paper, and I want to read a few sentences from it.

Attention is called in this article to the attempt to indict some men in New Jersey, as I recall. [Reading:]

To understand the significant episode here told, it is necessary to understand, first, one of the little known but far-reaching practices of N. R. A.

Under section 7(b) of the N. R. A. statute, employers and workers in any industry, in any part of the country, are permitted to get together and fix wages for the local region covered. The wages thus fixed and the agreement thus made is then sent on to Washington and submitted to the President of the United States. The President signs, and the agreement then becomes, as General Johnson used to put it, "the law of the land." Thereafter every employer in that industry in that region covered must pay the fixed rate or be subject to prosecution in the criminal courts.

Not merely those employers who took part in the agreement, but every one in the industry. And not merely those employees who took part, but all employees in the industry. It is a sheer case of compulsion of a whole group by part of the group—part of a group writing a so-called "law" under which others in the group may be haled before the criminal courts. A simple agreement between two groups of private citizens becomes a "law."

If the reader thinks this is extraordinary extension of the criminal law, the answer is "yes", it is very extraordinary. But it exists. As this tale will relate, a group of 24 men composing a grand jury in Long Island, N. Y., thought it a little too extraordinary to be right.

In New York City and part of Long Island, some, though not all employers who are members of the mason contractors' division of the construction industry got together with some, though not all, workers in that industry. The two groups agreed on a wage-rate together with other conditions of employment. The wage-rate was fixed at $1.50 an hour for regular hours and $3 an hour for overtime, or for work done on Saturdays, Sundays, or holidays.

This agreement was submitted to N. R. A. for approval. N. R. A. approved and sent it to President Roosevelt for signature. The President signed it and on August 4 last it became law. Any one who violated it was now liable to punishment for crime.

An employer in Long Island did violate it. He hired some bricklayers at a rate of pay satisfactory to them, but below the $1.50 an hour fixed in the code agreement. Promptly he was summoned before the grand jury. The local assistant district attorney presented the complaints. The local N. R. A. code authority, Mr. John A. Mulligan showed the grand jury a certified copy of the code agreement. Both the employer and the bricklayers freely admitted the underpayment. There was no denial by any one. It was a water tight case, completely proved. But the grand jury did not indict.

I will put the rest of the article in the record.
(The balance of the article is as follows:)

This refusal of the grand jury to indict, and similar refusals by other grand juries in other N. R. A. attempted prosecutions in other parts of the country, is a most significant sign. It means death to N. R. A., even more certainly than the decisions adverse to N. R. A. handed down by courts. If grand juries refuse to indict, N. R. A. is doomed more surely than national prohibition was doomed when grand juries refused to indict, and petit juries to convict, in cases involving prohibition. Prohibition was imbedded in the Constitution and N. R. A. is only a statute.

PLAIN DEFIANCE OF FACTS

In the present case, the grand jury refused to indict in plain defiance of the facts. They refused, undoubtedly, because they do not believe in the law. They may have been moved to their disapproval of the law by one or all of several considerations.

They may have regarded the law as fundamentally preposterous, the idea, basis in N. R. A., that two or three or more private citizens can get together and write a so-called "law" under which another citizen can be haled into criminal court. (Incidentally, this grand jury may have been moved in part by thinking that the rate of pay for bricklayers, $1.50 an hour and $3 an hour for overtime, is so high as to be contrary to public interest. Many persons think this, including some enlightened labor leaders. Many persons are convinced that the construction industry cannot get under way, and business recovery cannot come, until the cost of labor in building is reduced to some reasonable relation to wages generally.)

SEES FANTASTIC ASPECT IN LAW

The grand jury in this case may have thought the law is fantastic in a particular respect. I know it strikes me as fantastic, the idea of men at some point hundreds or thousands of miles away from Washington making a local wage agreement and then sending the agreement to Washington for approval by the President. Copies of these "regional labor agreements", or announcements of them in the form of N. R. A. publicity "hand-outs", come to my desk daily. One this morning is about an agreement made at the little town of Beatrice, Nebr., for employers and workers in the painting and paper-hanging trade in Gage County. Another on my desk is an agreement "between employers and employees in the electrical contractors industry in the region of Allegheny and part of Westmoreland Counties, Pa." The region covered is described in language suggesting how narrowly local these agreements are:

"Allegheny County, Pa., and that portion of Westmoreland County, Pa., bounded by * * * a straight line drawn from the east corporate limits of Garver's Ferry, Pa., to the east corporate limits of Export, Pa.", etc.

This funneling of so many local matters to Washington and on to the President's desk is itself grotesque and contrary to common sense. Among other things, it makes the President's signature a joke and essentially a sham. Everybody knows the President cannot read these agreements, nor do more than hurriedly dash off his signature on the dotted line. Certainly that the President cannot read some things that he signs raises doubt about his reading more important things.

HELD SIGN OF FATE OF N. R. A.

But the principal significance of the refusal of grand juries to indict lies in the sign it is of the fate of N. R. A.

The case here described does not tell the whole story of this part of N. R. A. Under the same section of the statute, if local employers and workers do not

agree on a wage rate, the President himself, on his own initiative, "is authorized to prescribe minimum rates of pay and other conditions of employment." The discretion involved in "other conditions of employment" gives the President power to fix the wages of every person in the United States, and to fix a different rate at his discretion in every town, county, or other small community. If the President exercises such power, anyone thereafter paying a different wage is subject to criminal prosecution.

Plainly, Mr. Roosevelt and General Johnson, when they started N. R. A., bit off a large mouthful. They seem now in need of that device which historians of high-life banquets in ancient Rome called a "vomitarium." We are about to learn, I suspect, that the aggregate common sense of all the grand juries in the country is more powerful than the whole of N. R. A.

STATEMENT OF S. CLAY WILLIAMS—Resumed

Senator KING. Are you familiar with the case referred to the excerpt I have read from the article which has been put into the record?

Mr. WILLIAMS. I am not familiar with that specific case.

Senator KING. There are many cases of this character, are there not?

Mr. WILLIAMS. Quite a few of that general character.

Senator KING. Where a group of individuals of an industry get together, formulated a code, had it approved, and then prosecuted or attempted to prosecute persons who had violated the provisions of that code?

Mr. WILLIAMS. That is right. It comes up on two legs. First, it involves the power of imposition of a code upon a minority that do not in the first instance agree thereto. And second, there is another phase of it, if you will let me finish Senator, where some having agreed, do not live up to the agreement. So it presents the two phases.

Senator KING. Is it not a fact that in many instances in these codes, not only those who subscribe to the code are a small minority of the entire industry throughout the United States?

Mr. WILLIAMS. We do not think so. We are supposed to require before we approve a code, that there is a substantial majority representation.

Senator KING. I would like to put into the record an editorial from the Desert News of Salt Lake City, Utah, one of the leading newspapers of the West, appearing February 27, 1935, entitled, "The N. R. A. Investigation." It is a very severe criticism of it, its operations and its tyrannous provisions.

(The editorial above referred to is as follows:)

THE N. R. A. INVESTIGATION

The "blue eagle" was a most formidable bird not so many months ago. For a while, under the vigorous tutelage of the militaristic Hugh S. Johnson, the blue descendant of the King of the Crags bid fair to outrival all his forbears in flying and screaming.

But long before Mr. Johnson ceased to be the official trainer of the "blue eagle", and commenced to write the obituary of the bird, there were pronounced rumblings of discontent, in many sections of the country, regarding some of the strange and rather ruthless antics of the bird.

Under the sanction of the N. R. A. numerous voluminous codes were drafted, interpreted and enforced by groups of men who had neither legislative, judicial, or governmental executive ability. To a large extent these quasilegislative groups were composed of representatives of "big business." Naturally enough, these men were interested primarily in building up their own enterprises. As a result

they sometimes wrote into the codes regulations that struggling beginners in various industries could not comply with and still survive. Moreover, rigid restrictions upon the commencment and enlargement of enterprises were formulated and enforced.

It is claimed that the enforcement of these codes has resulted in real hardship to small business men. In some instances these struggling beginners, unable to comply with stringent code requirements were forced out of business.

These little industrialists commenced to complain. Coincident with their complaints, came pronounced lamentations from the consumer. He discovered that his lot was being made intolerable by the sudden arbitrary raising of prices. In some instances food prices rose over a hundred percent in less than a year.

As a concrete example of the injustice and hardship wrought by the monopolistic license taken from the N. R. A. the local consumer is now compelled to pay 40 cents a pound for butter, made from butterfat for which the farmer is paid no more than he received when butter sold to the retailer for 25 cents a pound. Oranges, which are hauled directly from the orchards to retailers in trucks, without being subjected to monopolistic price fixing, sell today for about the same price they commanded a year ago.

The tendence of some of the codes to foster monopolies and arbitrary price fixing has for months engaged the attention of the justice-loving Senator William E. Borah, who has inveighed against this economic oppression with all the power of his great eloquence.

Now a senatorial committee has been appointed to conduct a systematic investigation into all phases of the N. R. A. It is reassuring to know that Senator Borah is a member of the committee. His well-known inquisitorial powers insure a searching examination of the methods pursued under the various codes. Every lover of fair play in business and industry will indulge in the sincere hope that the committee will spare no pains in finding the facts and in seeking to rectify them.

Senator KING. You stated yesterday, Mr. Williams, in reply to a question by Senator Couzens that you thought it was a rotten principle to give the Government the authority to prevent a man from going into business?

Mr. WILLIAMS. I did.

Senator KING. And is it not a rotten principle to prosecute persons as this mason or this builder was prosecuted in Long Island?

Mr. WILLIAMS. I could not say so under the differing circumstances there. It is a question of whether or not we are going to adopt and stand to a certain theory and plan for furthering certain ends, or whether we are not, and if we are going to stand on that, then we want to be fair and require full compliance all around by everybody.

Senator KING. In intrastate as well as interstate?

Mr. WILLIAMS. That leads into other territory. I do not answer as readily, Senator King, on that as I do in that territory. Frankly, in my way of thinking, there is a great deal of differences between a code which applies to the great national industries, one competitive with others all over the country, and where particularly the letting of a few, no matter where they are, go free from observance of restrictions of requirements, might damage the whole national set-up, as against the more localized industries where the question of what one pays, for instance, or what hours one works, has so much less of relationship to competitors.

For instance, I do not think it makes much difference whether the employees in a hotel in Tulsa, Okla., are on the same basis as they are in Bangor, Maine, or not. I do not know of any reason why there should be any disturbance of the competitive situation between those two things.

Senator KING. Do you not recognize that a little hotel down in Tulsa is intrastate instead of interstate?

Mr. WILLIAMS. In my thinkings; yes. I have testified against some of the theories of——

Senator KING (interposing). Mr. Richberg?

Mr. WILLIAMS. I do not want to say that. But as against some of the theories which are understood otherwise.

Senator KING. What is your opinion to giving this same agency, the code authority, the authority to tell those already in business how much they may produce, or limiting for example, the number of hours they may operate their machinery?

Mr. WILLIAMS. I think that principle taken in the abstract is not a principle sound enough to commend itself to democratic thinkers. On the other hand, I do think that in certain special situations, where there are particular ends to be served out of certain special conditions that obtain, that it may be justifiable to violate what in the abstract is an unsound principle but as carried to the particular case, may have in it the possibility of good through violation.

Senator KING. You believe still, do you not, that the principle of the minority having some protection in our democratic or in our allegedly democratic form of Government, has merit?

Mr. WILLIAMS. I do. I believe in the minorities having protection, down to the point of single individuals having protection.

Senator KING. How many codes include limitations iu the machine-hours or other similar devices, such as allocation of market, and which have definite restrictions on output?

Mr. WILLIAMS. I cannot give you the total number. Over 100. The provisions of very few of them are effective——

Senator KING (interposing). On what principle did the N. R. A. determine whether a given industry was to be given this privilege of restriction of output and competition?

Mr. WILLIAMS. I was not working in the N. R. A. at that time, but if I may speak of the general knowledge I had of the situation as an outsider at that time, I would say that they recognized the necessity of those things by way of serving these common ends of better wages, shorter hours, distribution of employment, increase of purchasing power, recognizing along with that, special conditions in the industries that made it necessary to do that kind of thing in order that we might serve those purposes I described.

Senator KING. Is it not a fact that generally the question was decided not on economic merits of the case, but rather on the power of the industry or on the strength of certain industries' protest, that they would not accept a code without such a provision?

Mr. WILLIAMS. No; I think that is not correct, Senator. I do not mean to say that industries were not urging those conditions as the reasons why they should have those provisions, but I do not think the power of the industry had anything to do with it.

I do think this is true, that the size of an industry and the number of employees that would be benefited by working out some plan under which there would be more people employed and a greater purchasing power through wages, was considered by the N. R. A., but that is apart from the question of the power of industry, and rather more on the basis of the size of the industry attested by its capacity to employ and pay wages.

Senator KING. Is it not a fact that the demands for such restriction in the majority of cases came from the large units throughout the country?

Mr. WILLIAMS. I do not think that is true, to the exclusion of the small. Of course when you get any group together representing an industry, you will have both large and small in the groups. That is the normal thing.

Senator KING. It was the large industries as a rule that promoted the codes? By that I mean that took the initiative in formulating the codes?

Mr. WILLIAMS. I think this is true, Senator King, that taking the business set-up in this country as it existed at the adoption of the N. I. R. A., with its regulation of trade associations as a nucleus of the representation of industries from which to move, it was probably true that the more active, whether the larger or the smaller, the more active units in business were apt to be found in the trade associations than those who were less active or less enthusiastic along certain lines and who were not in there, but——

Senator KING (interposing). The type of those large associations, such as the Steel Institute?

Mr. WILLIAMS. That was one, but it is a unique institution as tested by trade associations generally. It serves a great many purposes that the ordinary trade association does not have as a part of its field of service.

Senator KING. Have not those provisions to which I have just called your attention had the effect either of increasing prices or maintaining them at a higher level?

Mr. WILLIAMS. I do not think they have, Senator King.

Senator KING. To the disadvantage of the public who had to buy?

Mr. WILLIAMS. I do not think those provisions have. I want to couple that with this statement, that of necessity any provision which requires the payment of higher wages and the working of shorter hours and the elimination of cheap child labor, necessarily it will increase the labor costs of the product, thus forcing the cost and therefore the price of the product upward, but narrowing it to the particular type of provisions that you are speaking to, I think the answer as to whether or not those provisions substantially raised the price level is, no.

Senator KING. During the past 22 months there have appeared frequently in the papers, as I have observed, statements that the N. R. A. had declared the existence of an emergency in this or that industry, and it ordered a limitation of machine hours or other modifications of the code for the period of the emergency. Is that not true?

Mr. WILLIAMS. That is true.

Senator KING. Is it not a fact that in some instances the industry involved was merely experiencing a sort of a seasonal decline or seasonal interruptions in continuity of the flow of its activities?

Mr. WILLIAMS. Without denying that there were seasonal declines, I do not think that those applications of the emergency principle were made in any case where it could be determined that the condition at which the N. R. A. was looking was wholly accounted for by a seasonal decline, but as to denying that, let me go forward and say one other thing.

From the point of view of the administrators of N. R. A. with a, prime object before us of sustaining employment and sustaining purchasing power, it would make very little difference from those angles

whether a decline in proportions calculated to prove disastrous to employment and wages came through a commonly termed emergency, or through only a seasonal decline, because you would have the people thrown out of employment and their wages reduced, just as effectively by one as the other, but let me conclude with the statement that I do not think any adjudication of that kind was made upon the basis of what could be detected to be a seasonal decline.

Senator KING. Would you regard it as fair and a proper exercise of the tremendous authority which is claimed by the N. R. A., to announce an emergency at the request of A, B, and C organizations, or units, when B and E did not want it?

Mr. WILLIAMS. You have established a majority of three against two.

Senator KING. Well, A, B, C, D, X, Y, Z, and a dozen others?

Mr. WILLIAMS. I would not regard it as fair to announce any emergency upon the appeal of any small group in any industry, except as that appeal might be based on conditions which in themselves warranted, and for our purposes allowed or compelled the declaration of the emergency.

The second section of the answer is that if a minority were asking for a declaration of emergency and a majority were actively opposing it, instead of standing mute before it and therefore leaving the basis of assumption that they were agreeing, I do not think the emergency should be declared.

Senator KING. Would the minority be determined by the number of individuals or units or by the strength of the units themselves?

Mr. WILLIAMS. It would be determined upon the combination of the numbers and the volume of output.

Senator KING. Has that always been the rule?

Mr. WILLIAMS. So far as I know it has always been the rule.

Senator HASTINGS. Well Senator King, I was wondering if this is not true. I got the distinct impression that that declaration of emergency was assumed to be necessary in order to make the action legal. Is that not true?

Mr. WILLIAMS. The declaration of emergency follows the policy laid down in office memorandum no. 228 in which there was the announcement that these things referred to as price-fixing provisions should not be approved except in case of emergency; therefore, the declaration of an emergency as a preliminary step to making the application became pertinent.

Senator HASTINGS. I remember distinctly that when they undertook to enforce upon the independent distributors of hard coal in my State, they first had a meeting and a hearing, and they always declared that an emergency existed. The emergency from my point of view was with the consumer who wanted to get his coal as cheaply as he could, but it was an emergency instead of meeting that situation, it increased the price $1.85, and that is why I drew the conclusion that there must be something back of it, the legal assumption that it was necessary to declare an emergency before you could legally act upon this. That is where I got my impression.

Mr. WILLIAMS. Let us point to three schools of legal thought that I know of, and I do not pretend to know of all the schools of legal thought in this territory, but there is one school of legal thought——

Senator KING (interposing). You mean in the N. R. A.?

Mr. WILLIAMS. In and around and outside; all three places.

Senator KING. The question propounded by the Senator, as I understood it, related merely to certain action taken by the N. R. A. and what they considered or construed, rather than what these nebulous schools outside might think.

Mr. WILLIAMS. All outside legal theories reflect themselves to some extent upon the inside view of policy or legality and would narrow right down to what Senator Hastings is talking about in terms of an emergency in an industry from his point of view and the N. R. A. point of view, and let me make this observation. While the emergency to the Senator was a question of price, the emergency from the point of view of the N. R. A., and the only kind of emergency that N. R. A. is interested in recognizing, is an emergency which threatens a condition under which employment or wages, purchasing power, will be injuriously affected. That is the type of emergency that N. R. A. is looking for as a preliminary finding to declare one of these emergencies.

Senator KING. But many of the deputy administrators and those who exercised authority in the N. R. A. represent groups, did they not? Groups of the manufacturers or employers?

Mr. WILLIAMS. I am not sure what you mean by "represent." If direct representation, the answer is no they do not. If by that you mean that they come out of a background of activity in a given industry, that is frequently true.

Senator KING. Just as you stated yesterday, that there was a number who had come out or who had been drawn—which was the expression you used—from an industry, and after they had gotten their codes, went back to the industries?

Mr. WILLIAMS. That has happened in some instances, but they go back; those men that go back, go back to different industries. We have a rule, for instance—I do not know whether it is promulgated in these exact terms or not—but it is a rule that scrutinizes very carefully the question of whether or not any man connected with N. R. A. can go back to an industry that he has ever had anything to do with in N. R. A. and have anything to do thereafter with the code matters for a long time, similar to the old Treasury rule which kept a man from going out of the Treasury and going back to private employment.

Senator KING. Getting back to the line of inquiry that I was directing your attention to yesterday, may there not be a monopoly of an industry as well as of a single concern?

Mr. WILLIAMS. There may be a monopoly of an industry.

Senator KING. As well as of a single concern, like the Aluminum Co., for instance?

Mr. WILLIAMS. There is a little confusion in my mind as to what you are including in "industry" as against "a single concern". Of course a single concern's business is a monopoly to it, but it is not a monopoly ordinarily as tested by the whole volume of business.

Senator KING. It might be, depending upon the character of the product.

Mr. WILLIAMS. If it were a monopoly, a single concern would be the whole of the industry. That is where my confusion lies.

Senator KING. You might conceive of a monopoly of an industry as well as of a single individual or unit?

Mr. WILLIAMS. If the single unit were a complete monopoly, there would not be any industry outside of that single unit.

Senator KING. It would constitute a monopoly?

Mr. WILLIAMS. It would be the monopoly; yes.

Senator KING. Do you think it possible for any single concern or a small group of concerns engaged in private business to secure public approval for price-fixing provisions?

Mr. WILLIAMS. I think the answer is no, except as there might be shown the clearest kind of case of necessity for the price-fixing provision in order to serve values or purposes that, for the time being at least, were being regarded as more important than the avoidance of an unsound economic principle of price fixing?

Senator KING. Assuming the facts as stated in the previous question, would not such efforts be promptly classified as activities in violation of the antitrust laws?

Mr. WILLIAMS. They would except as the antitrust laws might by the provisions of the code, be suspended to the extent of giving it unity.

Senator KING. Is it not a fact, however, that the efforts of an entire industry or such parts of the industry as were organized, are now being directed toward asking approval for just such provisions as would be deemed antisocial if attempted by anybody else or by very small groups.

Mr. WILLIAMS. I do not think that is the case.

Senator KING. Are you sure about that?

Mr. WILLIAMS. I have no information and no evidence that that is the case. I think there is more and more from week to week and acceptance on the part of industry of the idea that there is not going to be in N. R. A. and there cannot be expected out of N. R. A. these extreme things that some folks hoped at one time would come out of N. R. A., but that N. R. A. is more and more simmering down and going over to a proposition of attempting to serve a few fundamental values without allowing improper values to accrue to anybody else meanwhile on the other side, recognizing all the while the necessity of serving some of the unfair trade-practice elimination territories, while serving these other territories on the other side which impose the burden.

Senator KING. It would follow, would it not, from the questions I have just propounded and your answers, that from the standpoint of society, and industrial monopoly is destructive and as antisocial as a monopoly controlled by a single individual or by a small powerful group?

Mr. WILLIAMS. By "industrial monopoly", I am not sure what you mean, Senator King.

Senator KING. A monopoly in industry.

Mr. WILLIAMS. In all of industry if I may ask, or in a given industry?

Senator KING. Both. In a given industry, say for instance steel or oil or sugar or brick or cement. Take cement as an illustration. Or aluminum.

Mr. WILLIAMS. I have a little trouble with the question for this reason——

Senator KING (interposing). You know what an industrial monopoly is, do you not?

Mr. WILLIAMS. An industrial monopoly in one or in a few or in more than a few? Of course every industry is a monopoly in the hands of the total group that are engaged in that industry.

Now, as under competition or for any other reason, one after another falls out, it is still a monopoly in the hands of a fewer number, and if everybody were driven out except one, it would be a monopoly in the hands of that one concern, which is the only true definition of a monopoly so far as I know.

Senator KING. The question is very simple.

Mr. WILLIAMS. I am trying to answer it and to say——

Senator KING. An industrial monopoly, other than a monopoly which was formed and controlled by an industry or a limited number, is that not just as antisocial as if that monopoly were controlled by one concern?

Mr. WILLIAMS. If you want to handle the word "monopoly" in the way you say, every industry is a monopoly in the hands of the group in that industry. But that is not my idea of monopoly.

Senator KING. You know that the farmers are not a monopoly; the farmers who produce cotton down in the South, is that a monopoly?

Mr. WILLIAMS. It is a monopoly in the group that grow it, but what I might say, Senator King, is that that is not my view of monopoly.

Senator HASTINGS. Will you describe it as an offensive monopoly? That will make it clearer.

Mr. WILLIAMS. If I may make about a two-sentence stab at the answer, I think I will give you the answer that will clear the territory. If you mean by "industrial monopoly" the domination of a national situation by industry, I am very vigorously opposed to that. I think it is improper that any section of American life should be completely dominated to the exclusion of the voices of others. That, for the broad question.

When you come to monopoly of a given section of industry, that is of one section of industry, clearing the definition and doing a little more, of course the industry, any given industry, is wholly in the hands of those who are engaged in that industry; but when you come to bringing that down into one hand, one pair of hands, or a few sets of hands, you are approaching my conception of monopoly, to which again I say I am personally vigorously opposed, because I think it is not in the public interest for monopolies of that definition to exist.

I do not say that without recognition of the fact that we have some fundamental monopolies that are developed upon the patent laws of the country, and I am not speaking of these monopolies established upon the basis of patents. That is an entirely different build-up, but I think it is definitely against the public interest to have monopolies exist, and I call your attention to the fact that you know so much better than I do—all of you gentlemen—that written into this bill under which we worked, there is two or three times the inhibition against the encouragement of monopolies, and one of the practices of N. R. A. which it has tried to be most careful in is to avoid doing anything that tends to build monopoly or to impair or weaken or impose upon or work unfairly with the small units in industry.

Senator KING. There will be a great deal of difference in opinion in that. Is not the effect upon the consuming public just as serious whether the monopoly is in the hands of a group as if it were in the hands of an individual?

Mr. WILLIAMS. No.

Senator KING. You do not think so?

Mr. WILLIAMS. No.

Senator KING. That is, as to the increase in prices.

Mr. WILLIAMS. If there are separate units operating independently one of the other, that is all that all of business is.

Senator KING. But I mean so far as prices are concerned. The effect of higher prices, the restriction of production, is just as injurious to the public, whether the higher prices or restriction of production is caused by a few units or by one, is it not?

Mr. WILLIAMS. As far as the N. R. A., the answer is yes.

Senator KING. That is what I am alluding to. It is more difficult to get rid of an industrial monopoly when once established than to stop a single concern that is monopolistic, is it not?

Mr. WILLIAMS. I cannot conceive of an industrial monopoly as apart from a single concern in a monopolistic position except as you may have two or three or four banded together as a group so that they operate as one. If that is what you mean——

Senator KING (interposing). That is what I mean.

Mr. WILLIAMS. That is absolutely forbidden, as I understand, under existing laws, and certainly N. R. A. has tried to avoid doing anything, and I think has been 100 percent successful in its attempt to avoid doing anything that would establish that kind of monopoly.

Senator BLACK. May I ask a question?

Senator KING. Yes, certainly.

Senator BLACK. You said, anything that tends to monopoly. The mere fact that people engaged in business meet together tends to monopoly?

Mr. WILLIAMS. I do not think it does.

Senator BLACK. It has always been recognized, has it not?

Mr. WILLIAMS. It has always been recognized that there is thereby presented the possibility of things being done which could not be done or agreed upon if they were held apart, but whether or not it goes forward to the development of monopoly is a different thing. I do not think the mere getting together in itself tends to monopoly.

Senator BLACK. You do not agree with this statement then:

People of the same trade seldom meet together even for merriment and diversion but the conversation ends in a conspiracy against the public or in some contrivance to raise prices.

Mr. WILLIAMS. I do not think that is so. I do not know whom you are reading from.

Senator BLACK. I will continue (reading):

It is impossible indeed to prevent such meetings by a law which either would be neglected or would be consistent to liberty and justice, but though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assembly much less to render them necessary.

As a matter of fact, this law does not only encourage the meeting together, but makes it necessary to, to obey the code, does it not?

Mr. WILLIAMS. It does.

Senator BLACK. So that if those statements are founded on any facts, the codes do tend toward monopoly, and price contrivances do they not?

Mr. WILLIAMS. I cannot accept those statements as representative of what is indicated as to what necessarily happens, but I am agreeing with you that by forcing the heads of the companies in an industry to get together, you are developing an opportunity for the doing of some things, the opportunity for the doing of which would not be prevented except by the people getting together.

Senator BLACK. May I ask you a question in that connection? Do you believe it would have been possible for 49 businesses—I believe it was 49, if I understood Senator King correctly—on printing, where it was exactly the same, unless there had been some meetings or understandings or agreements, express or implied.

Mr. WILLIAMS. Very easily possible, Senator Black.

Senator BLACK. How?

Mr. WILLIAMS. Under an open price posting, because if prices at which various units are operating are posted, and a contract comes along to bid on, all that anybody in the industry has to do is to look at the list of the prices as posted, and he knows there is not any use to bid above the low, because he will lose the business if he does, and there is a great probability that they will all shoot at that low bid.

Senator BLACK. However, when they all put the same bid in, that indicates that either by reason of posted prices, with an express or tacit understanding in advance that the posted prices would prevail, does it not lead you, as a sane and reasonable man, to believe that there was some kind of express or tacit or implied understanding that the posted price would be the one that would be accepted?

Mr. WILLIAMS. I do not think the tacit or implied or express agreement is an essential element of that situation at all, Senator Black. I think it is as simple as a man trying to meet his competitor's price.

Senator BLACK. You do not think it was accidental that the bids were the same, do you?

Mr. WILLIAMS. No; I think it traces directly to the figure that represented the low price on the posted price list, the low price at which somebody was willing to sell that article.

Senator BLACK. We agree that the bids which were exactly the same for 49 companies were not accidental, do we not?

Mr. WILLIAMS. Not accidental, because they had a relationship to certain public information, public, at least, in the industry, as to what somebody was willing to furnish that bill of goods at.

Senator BLACK. That is the way the steel companies, the oil companies, for years fixed the price of gasoline throughout the Nation, is it not, by one of the big companies posting its price and the others following?

Mr. WILLIAMS. I have never worked either in the steel or oil industries, or been particularly familiar with either one of them, but if I may take you to a little wider territory, nearly all business is done upon a basis of recognition of the price at which somebody is selling something. There is not any use to try to do business too far above the base at which some other fellow is trying to do it.

Senator BLACK. If that is true, Mr. Williams, the idea of a competitive business system is all antiquated, is it not, and useless?

Mr. WILLIAMS. No; I do not think what we are talking about has any relationship at all to the question of potential or actual competition.

Senator BLACK. Let us see if it does not. Competition means, does it not, that people are engaged in business, in selling something, different units of one of them may be by reason of more efficiency than another, or better ability, or something of that kind, who are enabled to sell their goods cheaper than the others, and therefore undersell. That is the idea of competition, is it not?

Mr. WILLIAMS. That is the idea of competition, not restricted in any way by posted prices.

Senator BLACK. Where is the competition, then, when you have 49 companies making one bid, and only 49 making it, and all of them making the same bid? Is it true that we have reached such a stage of perfection in this country that one company is as efficient as another?

Mr. WILLIAMS. Let us break that answer down. That is the proof that there was plenty of competition down to that low figure at which the bids lay, because they all came down to that line.

Senator BLACK. How do you know that some of them did not intend to sell lower than that before this leader posted his bid.

Mr. WILLIAMS. It is just as equally positive proof that there was no competition below that line, so it proves itself both ways.

Senator BLACK. Is there any kind of business in the country, then, where we have reached a stage where we still have any competition left, where they do not follow the leader?

Mr. WILLIAMS. There was competition in that very situation.

Senator BLACK. These 49 were competing with each other?

Mr. WILLIAMS. They were competing with each other, assuredly, down to that line, and as a matter of fact, every one of them down to that line.

Senator BLACK. But when they reached there, they had to stop?

Mr. WILLIAMS. They were evidently not competing with each other below that line because somebody would have dropped his price below.

Senator BLACK. Why were they not competing below that line?

Mr. WILLIAMS. May I just finish that answer, and then answer that other question?

Senator BLACK. I think you have finished it, but go ahead.

Mr. WILLIAMS. Everyone that put in that bid was at perfect liberty to put in a lower bid.

Senator KING. He could not do it under the code, could he?

Mr. WILLIAMS. He could have posted any price that he wanted to. I am talking of your regular provision in the codes and not to a specific provision which may present a variation, but your standard provision with respect to posted prices. Anybody can post any price he wants to. And there is no control over the price that he posts, but there is an inhibition against his selling below a posted price. So I say that in your case of the 49 bidding exactly the same figure, it was open to any one of them to bid below that.

Senator BLACK. You do think do you not, that in those 49, from your experience in business, there must have been some difference in efficiency and operation which would have justified one in bidding lower than the other?

Mr. WILLIAMS. It would be miraculous if the cost of 49 manufacturers in any given thing should fall on exactly the same figure.

Senator BLACK. The fact does remain, whether you call it destruction of competition, or whether it is by agreement or not, that when they all in one given industry paid a single price, that is an indication that the public cannot get it for any less, even though one is more efficient than the other?

Mr. WILLIAMS. The answer is yes.

Senator BLACK. That being true, to that extent competition is gone, is it not, below that price?

Mr. WILLIAMS. No; competition is not gone at all. The only reason they cannot get it for less is that none of these free bidders, each entirely able to do without restriction whatever he wants in naming his price, has named the price. None of them has named the lower price, and that is the reason the public cannot get it any cheaper, but potentially any one of them could have named any price he wanted to, below that.

Senator BLACK. Potentially, yes; but what we are interested in is what happens to the consumer. It was not potential for the consumer if they did not do it and would not do it.

Mr. WILLIAMS. The consumer did not get the lower price if the seller did not name the lower price.

Senator BLACK. And he did not get it because he could not get it?

Mr. WILLIAMS. The consumer could not get it because it was not named, but the seller could have named it.

Senator BLACK. Suppose there had been no posting of prices and they had been engaged in what we call and have generally understood to be a competitive system, where each one bid what he thought he ought to get, and there was no posted price, do you believe that all of those bids would have been the same?

Mr. WILLIAMS. I do not believe they would have been the same, nor do I believe that they would all have been as low as that.

Senator BLACK. Do you believe that some of them would have been lower?

Mr. WILLIAMS. It is a possibility that some of them would have been lower, but if you want me to testify to my belief, it is my belief that they would not have been lower for the reason that my view is that the posting of prices tends to bring your bids down instead of building them up.

Senator BLACK. In other words, does that come within your definition of good trust instead of a bad trust?

Mr. WILLIAMS. I do not know anything about good trusts. I have no classification for good trusts.

Senator BLACK. Do you think there is a good trust?

Mr. WILLIAMS. No; I do not.

Senator KING. What about the tobacco trust?

Mr. WILLIAMS. There is no tobacco trust.

Senator KING. The cigarette trust?

Mr. WILLIAMS. There is no cigarette trust.

Senator KING. What about—well, I will get to that a little later.

Senator BLACK. That being the case, may I ask you if it is true that they can't get a level, whether you think it is a right level or a wrong level, below which there are no bids? That means that below that there is no competition, does it not?

Mr. WILLIAMS. No; for the reason that in every instance of the taking of bids, there is a level below which there is no bid, but that is

a long ways from saying that there is a level below which there could not have been a bid, and the latter is that under which competition goes by your picture and not the former.

Senator BLACK. Then I understand that you agree that in order to have proper competition, it is your conception that it is necessary that by some means of some measure, one company lets all of the others know in advance what his price is that he is going to make, so that if they decide to do so, they can follow?

Mr. WILLIAMS. No; I do not hold it is necessary to do that.

Senator BLACK. Then why do we have it?

Mr. WILLIAMS. We have it because, in the development of the codes in certain industries, that kind of provision was put forward by the members of the industry as a thing that they desired to have, and they have reasons why they explained they wanted it in. They were full of assurances that it would not be used along the lines that you are talking about.

Senator BLACK. That is natural, is it not, that they would be full of those assurances?

Mr. WILLIAMS. And there were definite reasons assigned supporting those assurances.

Senator KING. Just to interrupt, if you do not mind. How is it that the lumber interests, as soon as they got that code and posted prices, raised their prices up over 40 percent and the public had to pay for it? Was that a mere coincidence or was it the result of a combination in restraint of trade and buttressed by the supposed belief in the efficacy of the codes to protect them from competition?

Mr. WILLIAMS. Senators, I have no defense to offer for the Lumber Code. I think the Lumber Code provisions in that respect were about as unfortunate a set of provisions as could have been worked out.

Senator KING. And simply shows what may be done under the codes, does it not?

Mr. WILLIAMS. It does; in a way. I got a great deal of pleasure out of voting to suspend the price-fixing provisions in the Lumber Code, but having criticized——

Senator KING (interrupting). I wish you had gone a whole lot further with other codes, and you would have been entitled to more of the gratitude of the public.

Mr. WILLIAMS. Let me put this sentence in the record. In a number of instances during my testimony here, I have spoken in a way that may sound critical of a number of things that have been done in N. R. A.——

Senator KING. I don't think so. Not many. [Laughter.]

Mr. WILLIAMS. I should like to put this in the record, that in doing that I am not criticizing the men who handled or adopted or approved or administered those provisions. I am speaking out of an atmosphere that recognizes the fact that a great many things were put into codes on an experimental basis. There were people who said they would work and do good. There were people who doubted it, but who were willing to try them for a while, and they were put in under the frank admission that there was a great deal of question upon the advisability of putting them in, but under the experimental character of a great deal of this work, it was all right to put them in and watch them a while and see what they did, and eliminate them.

I am trying to say that we men who are now in the administration of N. R. A. when we speak of abandonment or repudiation of some particular provision are only exercising that judgment with respect to the record made by those provisions that we think those men who put them in in the first instance would have exercised had they been here and observed the results of the experiment they started.

I am trying to say that there is no criticism intended, nor do I think any criticism would be justified as against the man who approved and put in and administered a number of these things which were frankly put in to experiment with.

Senator BLACK. Now, Mr. Williams, returning, if we may, to the subject we are discussing—you stated that because numbers of the members of the industry asked that this be done—I have noticed that several times you have defended the price-fixing; I will not say price-fixing, but the posting of prices, on the ground that a large number of the industry wanted to do it. You believe in the theory, do you not, that to a large extent self-advantage operates to bring about the impelling motive on men engaged in business.

Mr. WILLIAMS. If you mean that selfishness, and I hope an intelligent selfishness is the motive power of all business, my answer is yes.

Senator BLACK. Do you believe that it is in the interest of the public—I am not talking now about the people engaged in business—that it was in the interest of the public to have the laws governing that business originally proposed by them, and to have only 1 man from 1 spot in 1 State determine then whether those will be accepted as the laws, whether those laws should be drawn as the Constitution provided, having equal representation from each State in the Union?

Mr. WILLIAMS. There is no instance of the laws under which business in any industry will be conducted being determined by the people in the industry. It is true that suggestions and even formulated provisions as to how an end we are working to can best be worked out was originated and expected to be originated in the industry group, because they know more about the business and are in the best position to write a ticket, bringing it forward as a solution, and as a means to accomplish the ends we are working for——

Senator BLACK (interrupting). Before you leave that——

Mr. WILLIAMS. May I answer your question, so that——

Senator CLARK (interrupting). Before you get away from that——

Senator HASTINGS (interrupting). Let him answer.

Senator BLACK. I have tried to let him answer.

Senator HASTINGS. I think the witness is still trying to answer.

Mr. WILLIAMS. It is necessarily a long answer.

Senator BLACK. All of them are.

Mr. WILLIAMS. I am sorry they have to be.

Senator BLACK. Yes. But if the Senator desires I will wait.

Mr. WILLIAMS. Thank you, Senator Black. What I was trying to say is, that the fact that an industry originates certain provisions and proposes them, does not put them into effect.

Senator BLACK. My question did not indicate that.

Mr. WILLIAMS. The N. R. A. itself, the governmental arm in the territory is armed with an authority to change or to approve or to repudiate or to modify in any way.

Senator BLACK. My question indicated that. That is not the answer at all, Mr. Williams. All right. Let me break the question up now, so that it can be answered very briefly, I think. It is a fact,

it is not, that these people representing the various groups of business—we will take the Lumber Code, for instance—do have the right, and you have recognized it and stated it several times, that they suggested it and they do have a right to promulgate or offer suggestions for rules which have the effect of laws on that industry if later approved by N. R. A.?

Mr. WILLIAMS. Assuredly so.

Senator BLACK. All right. Now we have gotten that far. So they had the effect of laws. When that comes to the N. R. A., who approves it?

Mr. WILLIAMS. The N. R. A. organization has its regular staff and channels of traffic through which it goes through that staff, in whose hands all of those provisions are subjected to the most careful scrutiny on the question of whether or not they are capable of and appropriate for use as aiding in the accomplishment of the purposes of this act.

Senator BLACK. The question was, Who approves it?

Mr. WILLIAMS. Finally the Administrator or the President or the Administrator working under the President.

Senator BLACK. Under the President?

Mr. WILLIAMS. Under the President. Under the present status it is the Board working under the President instead of a single administrator.

Senator BLACK. And if we decided to adopt laws in the way that the Constitution originally provided, those laws would be suggested in Congress and passed not by the representatives of each State, would they not, and then call for the approval of the President? That is correct, is it not?

Mr. WILLIAMS. Yes.

Senator BLACK. So that what we are doing here in connection with this is to permit the particular industry to initiate the laws and be approved by the President, with the veto power, instead of having Congress and the Senate, with an equal representation in each State, initiate the laws and have them approved by the President?

Mr. WILLIAMS. I do not read history that way.

Senator BLACK. You did not understand that under the Constitution each State had two representatives in the Senate?

Mr. WILLIAMS. I understood that; yes. I knew that much, no matter how little else I knew.

Senator BLACK. You understood also that before a law went to the President in the regular course, under the Constitution, it went through both the Senate and the House?

Mr. WILLIAMS. It is a question which end you read this thing from. I read it from the other end, from which it reads this way. that the Congress of the United States in the regular course that you describe, originated a law, the N. I. R. A.

Senator BLACK. You say the Congress originated it? Are you familiar with its history? [Laughter.]

Mr. WILLIAMS. Without meaning to lead into the details of its history, it eventuated from certain——

Senator BLACK (interrupting). Have you read General Johnson's articles in the Post?

Mr. WILLIAMS. I have read at least some of them. I am not sure that I have read all of them, but if I may say it this way, to avoid a controversy, out of certain facts and situations, it eventuated one day that the Congress of the United States had adopted the N. I. R. A., under which a vast administrative authority was vested, under which all these things that we are talking about are being done. Among the contemplations of that act was this very thing that we are talking about, that the industries should be invited through their proper representatives to get together and come out with suggestions as to provisions which, in their thinking, would enable this administration if those provisions were incorporated into codes, to go forward effectively to the accomplishment of the purposes which Congress had declared desirable and attempted to set up machinery to effectuate. So my answer is that, as tested by a proper legislative procedure, I think it meets the test.

Senator BLACK. The fact still remains, in spite of all that, Mr. Williams, that as both of us agreed a few minutes ago, that at the present time under the code system, the laws are initiated by industry which is interested in the profits of industry, and suggested to N. R. A. and then approved by the President?

Mr. WILLIAMS. The form of code provisions ordinarily originate with industry, although there are hundreds of provisions in codes that have been originated within the N. I. R. A. itself, and suggested to industry for their adoption.

Senator BLACK. But none of them by Congress?

Mr. WILLIAMS. None of them by Congress, for the reason that Congress in the adoption of the N. I. R. A.——

Senator BLACK (interrupting). I did not ask you for the reason. I am just trying to get the facts.

Mr. WILLIAMS. I can give you the reason if you do not shut me off.

Senator BLACK. Have you not objected very seriously to the arbitrary freight rates that have been set up by the Interstate Commerce Commission, which have practically paralyzed certain industries in the South?

Mr. WILLIAMS. For 30 years and more I have been objecting to that.

Senator BLACK. Have you not also insisted that there should be a regional representation, each section of this country should have a representation on that Interstate Commerce Commission?

Mr. WILLIAMS. I have thought it was very appropriate that there should be regional representation.

Senator BLACK. The reason you have that idea is that you think that there are sectional differences with reference to all commercial regulations and rules and laws, and that each section should have somebody to see that its particular industries are not stifled and paralyzed by unfair regulations?

Mr. WILLIAMS. None of us like for somebody to be sitting and writing rules and regulations and laws for us to live under without somebody being there present that knows something about the conditions with which we are affected.

Senator BLACK. Do you believe that the writers of the Constitution were sound originally?

Mr. WILLIAMS. Yes; I do.

Senator BLACK. You believe that?

Mr. WILLIAMS. Yes.

Senator BLACK. Then you believe that they were sound when in an effort to see that no particular State had any injury done to it, it was provided that with reference to the laws, they should be passed by a body where each State had equal representation for each State?

Mr. WILLIAMS. I think they were right.

Senator BLACK. Do you believe that before the N. R. A. was adopted, it should have had a provision in the law to give to your State, the State of North Carolina, the State of Alabama, the State of Mississippi, and the State of California, and all of the other States, equal representation on any board that passed on the laws governing the life of those sections?

Mr. WILLIAMS. I do not go that far in my thinking, because N. R. A. deals with a great many things that affect certain parts of the country in which certain parts of the country have definite interest that no other part has any interest in. For instance, automobile manufacturing is almost wholly in two or three States. I do not know any reason why North Carolina should have a direct representative in a situation dealing with that.

Senator BLACK. You do not figure that North Carolina has sufficient interest in automobiles to have——

Mr. WILLIAMS (interrupting). The manufacture of automobiles.

Senator BLACK (continuing). To have anybody connected with the laws governing the manufacture of automobiles?

Mr. WILLIAMS. I am not trying to exclude representation in the making of laws with respect to anything.

Senator BLACK. These code authorities actually make the laws that come right down to the vital every day points of American business, do they not, and decide whether it shall be a success or a failure?

Mr. WILLIAMS. When they become codes; that is, as to the approval of the Administrator, in a great many respects they have the effect of law.

Senator BLACK. After the approval of the administration, where there is no equal representation of State and where there is no regional representation of the industries of this country.

Mr. WILLIAMS. I have regarded the President of the United States as the President of all of the United States.

Senator BLACK. That is correct. The Constitution makes him so and gives him the right to veto all laws initiated and proposed in the bodies where each State has an equal representation with every other State. Do you think that the President ought to have the power because he is the President of the entire country to determine the laws for each State in this Union?

Mr. WILLIAMS. I do not think he has so done in this case. Congress has determined the law and written the ticket upon which even the President himself operates in this particular field.

Senator BLACK. But you were saying you considered the President as representing all. I do, too; to the extent that it is intended he should. But so far as these laws regulating the vital, everyday business affairs of this country are concerned, they have been written at the instance of industry, moved by the motive to get the biggest profit possible and to sell at the highest price. Initiating the laws and then having them approved not by any representation from the

various people in this country, but we will say, without mentioning it as a matter of personality, in the beginning General Johnson, and later on Mr. Richberg, and now as I understand 5 men who may come from 5 different places and may come from the same place. To that extent it is true, is it not, Mr. Williams, that those laws affecting the vital, everyday business affairs of this country have been made without representation of sections and without equal representation of States.

Mr. WILLIAMS. No.

Senator BLACK. You deny that?

Mr. WILLIAMS. I do, for the reason——

Senator BLACK. Let us take the Lumber Code. After the law is created——

Mr. WILLIAMS. Let me say——

Senator BLACK (interrupting). I understand you say the law has been created. We admit the law is created.

Mr. WILLIAMS. Congress put up the law, therefore it was not done without the participation of the various interests of the various sections of the country.

Senator BLACK. But we are talking now about the actual law that was initiated after that is being done. The Lumber Code was initiated after the law and after all of that had been passed.

Mr. WILLIAMS. It was.

Senator BLACK. And it was initiated by the lumber industry.

Mr. WILLIAMS. The form of provisions therein, I dare say, came forward from suggestions from the industry. I was not in N. R. A. at that time, but I assume that was true.

Senator BLACK. It was then approved by General Johnson?

Mr. WILLIAMS. It was.

Senator BLACK. And was then approved by the President?

Mr. WILLIAMS. It was.

Senator BLACK. The State of Alabama has a great interest in the lumber business. I think we will admit that it has, both directly and indirectly. I think probably the greatest income the State of Alabama had in the year before last was from the lumber business.

Mr. WILLIAMS. Senator, maybe I can help you by saying I do not think any more of the Lumber Code than you do, and I do not think you think much of it.

Senator BLACK. You seem to think more of the system by which it was created than I do. That was created by reason of the desire of the lumber people to get that through as a law, was it not?

Mr. WILLIAMS. That represented their proposal as to what we worked out with the purposes of this law that you gentlemen in Congress had passed. [Laughter.]

Senator BLACK. I did not pass it.

Mr. WILLIAMS. I did not say that you did. I would like to change the form of that answer. I mean that the Congress passed.

Senator BLACK. Not only that, but——

Mr. WILLIAMS (interrupting). Mr. Chairman, may I change that answer to read: "That the Congress had passed" instead of "that you gentlemen of Congress passed"?

Senator BLACK. In order to make my position clear I declined to offer a similar bill before that one was offered. In order to get my position clear I will make that statement. The lumber code initiated

there and approved by them—what representation did Alabama or North Carolina have at that time, outside of the men engaged in the particular lumber business—the few that might have been in it—with reference to making that code and promulgating those laws?

Mr. WILLIAMS. I cannot say what representation any given State had. As I say, I was not there. I do not know the list of those who proposed that code, but it will be made available here under a question that was asked the other day covering the people that proposed every code; but let me say two things, Senator Black, if you will, with respect to the lumber code——

Senator BLACK (interrupting). Yes.

Mr. WILLIAMS. To help clear some atmosphere.

Senator BLACK. Certainly.

Mr. WILLIAMS. In the broad outline, the proposal for a lumber code came out of this situation. The business in lumber the year before the code was asked for, was 18 billion feet. The inventory at the time that the code was asked for, lumber already manufactured in this country, was 7½ billion feet. That inventory was the key to the thinking of some of the N. R. A. people on a good many questions, because it presented the possibility under already paralyzed conditions in the lumber industry negativing the possibility of giving much employment or paying much wage, with that big inventory amounting to nearly one-half of a year's production being dumped on the market, if it were not protected in some way.

Out of the facts of that suggestion came the suggestion to the N. I. R. A. that the only way that you can have a chance to serve the purposes of this act in the lumber industry is to do something to keep that seven and a half billion feet of lumber from being dumped on the market at sacrifice prices. However rightly or wrongly, that argument had some weight, and these provisions that we are all so free to critize today with respect to the Lumber Code, were put into that code experimentally to determine whether or not that prescription proposed by the members of the industry would serve the purpose that we had in mind, that the N. R. A. had in mind. I was not there then.

After watching it a year, the picture changed to this extent: Instead of doing 18,000,000,000 feet of business, in the first year of the code, as they did in the year before the code, the business dropped to 14,000,000,000 feet. Instead of having an inventory reduced from 7½ billion feet to a reasonable figure, the inventory had grown from 7½ billion feet to 8½ billion feet.

Among other accompaniments of the application of the Lumber Code was the fact, as I remember the figure, that some 4,300 small manufacturing units, which had not theretofore been operating, came into operation.

When we got that figure, working experimentally as we were, we suspended the price provisions of the Lumber Code, as I think was the proper course to have done.

Let me say with respect to those figures, that I am speaking only from memory as I have not seen them for a long time; they are approximately correct. I know they are approximately right, but I do not guarantee the figures within a small margin.

Senator BLACK. Do you know how many of the small lumber companies were put out of business who complained that they could have sold their lumber if they were not required to sell it at a fixed price?

Mr. WILLIAMS. I never got but one letter in my life that I could not answer, and that was from a fellow just this side of you in Georgia, who wrote me that letter, and he wrote across the top of it in heavy red pencil, and he said, "If you will answer this letter, you are the first of six Government officials who will." That was what he said. He said:

I am trying to live up to the Lumber Code, and that means that I cannot sell my lumber or offer my lumber below a certain price. I have got a lot of neighbors who long ago have broken through the bars and are selling their lumber right by my door. I have a yard full of lumber that is just rotting on me. It has been a year and I have not sold a stick. I want you to answer this question for me, Shall I continue to comply with the code and let my lumber rot, or shall I break the code and sell it?

The second day after that, we suspended the price-fixing provisions in the code, and I could answer his letter, but frankly, I could not answer it until we did suspend it.

I am not defending those provisions in the Lumber Code. I am trying to lay out here the reasons and the facts that were in that situation, but I do not regard that as a successful N. R. A. operation.

Senator BLACK. May I say if you do not recognize it as a fact that when business men get together in a code or anything else, they will try to get an arrangement to fix the prices and keep them up and make higher prices?

Mr. WILLIAMS. I do not agree that when business men get together they will assume to do an illegal thing that they all know so well is forbidden.

Senator KING. What about the Gary dinners? We had the Sherman antitrust laws then.

Mr. WILLIAMS. I was not in this sort of a game at that time, Senator King. I do not know much about that. Senator Black, will you let me say one other thing?

Senator BLACK. Yes.

Mr. WILLIAMS. I am not denying that when a bunch of young boys with a few tenor voices in the group get together, somebody is not apt to strike a barber-shop chord and say, "here we go." I know that is so, but I do not think business men of this country generally can be assumed to have been willing when they were called together in the conferences with a view to working out codes to serve the valuable purposes of this act, to have been willing to go forward en masse to do illegal things. There are exceptions to everything, but I do not think that imputation can be laid at the feet of all the business men or the majority or many of the business men of this country.

Senator BLACK. That is another case, then, where you disagree with Adam Smith?

Mr. WILLIAMS. Adam Smith lived so long ago that I have trouble in getting in tune with him on several points.

Senator BLACK. So do I; on many. You disagree with him in his statement that the Government should never, under any circumstances, turn over the initiation of the laws to the men engaged in industry, and whenever they suggest anything, he uses these words, "They should be looked at with caution and suspicion." You deny that?

Mr. WILLIAMS. I agree with all of that, and say that the N. R. A. has looked at all of those provisions with extreme caution and much suspicion in some instances.

Senator BLACK. Even in the Lumber Code?

Mr. WILLIAMS. I may say that I do not think that the business men generally took advantage of that situation. There is the possibility of it, though.

Senator BLACK. That being true, do you still believe that the best way to have those laws scrutinized is by having somebody appointed in the N. R. A. in one spot in one State, with one viewpoint of the industry, or to have those suggestions scrutinized carefully by elected representatives of all of the people, including the consumers, before laws are adopted at their suggestion? Which do you prefer?

Mr. WILLIAMS. Your question includes the reason why I am glad this thing is over here, because I think it is a thing that I think ought to be determined in the Congress, where the representatives of all of the people are.

Senator BLACK. Do you prefer, as a business man, to have your regulations for your business fixed by a representative in the N. R. A. or fixed by the Members of the Congress and Senate?

Mr. WILLIAMS. I prefer to live under a government of law as against a government of an individual, if that be the answer.

Senator BLACK. I think that is it.

Mr. WILLIAMS. I have waived a lot of preference in these latter days in trying to do my part in certain things declared and believed to be in the public interest. I save that much out of that answer.

Senator BLACK. If you get a government of laws instead of proclamations or ukases of individuals with reference to those regulations, Congress itself, with the veto power in the President, would fix the laws governing the business of this country so far as it has constitutional authority, would it not?

Mr. WILLIAMS. It would fix it so far as it has constitutional authority so to do.

Senator BLACK. That is what I said.

Mr. WILLIAMS. And so far as it is practicable so to do, but most of us who contemplate this sort of situation recognize two things, that while all of these things that you are talking about as to the propriety of the Congress as the representative of all of the people enacting the legislation is entirely O. K. and ought to be the way it should be done, nevertheless, speaking from the administrative point of view and from the point of view of the general good there are in the administrative problems a good many things for which to serve the ends sought, in the best way, it is absolutely necessary that some administrative discretion be reserved in somebody to avoid getting into a legislative rigidity that makes you run through situations that are injurious, and you know they are injurious and are not serving the common good, but because of legislative rigidity accomplished through the legislative body that tried to speak in too much detail, you have got to go through, whether you will or not, and even when you know you are going to get hurt in going through, so that while subscribing to the general rule that you are talking about, that all of the authority rests here and should rest here——

Senator BLACK (interrupting). And if the prices should be fixed——

Mr. WILLIAMS (continuing). There is a limit beyond which legislation cannot go without so fixing and freezing everything and without nullifying the benefits of a lot of things that are attempted.

Senator BLACK. If any price-fixing is going to be done, it should be done by the Congress or by the Congress representing the consumers, and——

Mr. WILLIAMS (interrupting). I do not think it ought to be done by anybody.

Senator BLACK. If there is to be permission to post prices which are to be followed and which are actually practically followed by others, and that is to be done, should that be done by Congress where the consumers have representation, or not?

Mr. WILLIAMS. I should be perfectly content to see that Congress do it, if I may use that to illustrate what I was talking about a minute ago.

I do not think the Congress has any opportunity, for lack of time, if for no other reason, to make the detailed study of conditions in a given industry where it is claimed that the posting of prices will serve valuable purposes in line with the declared purposes of this act, and come to a correct determination thereof.

Senator BLACK. Do you not think that Congress could do it as well as General Johnson or Mr. Richberg—either one?

Mr. WILLIAMS. No, I do not think, if I may say that without——

Senator BLACK (interrupting). That may be true. [Laughter.]

Mr. WILLIAMS. Here is my point, if you will let me develop it. There is no offense in the answer, if you will let me develop it.

Senator BLACK. That may be true, but do you not think that the people, acting through their elected representatives, could do it as well as they could?

Mr. WILLIAMS. I am not speaking to the individual qualifications or capacities of anybody. I am speaking to the Congress as a Congress, and to the administrative officer as an administrative officer, my answer being based on the fact that the administrative officer has the opportunity to and it is his duty to get into and make a study of both the facts and the possibilities in a given situation in a given industry, and determine in its own good judgment and with whatever aids it can get, to say whether or not the doing of a certain thing in that industry might not be good when admittedly it would be bad in some other industry.

From that angle I say that the individual administrator could do it better than could the Congress, because I do not think the Congress has the opportunity to get into a situation and learn the facts and give it the intensive study.

Senator BLACK. Let me ask you a question which I think you can answer very briefly, and I won't ask you any more. Is it not true—I may have understood—I may have misunderstood the general trend of your testimony—but as I gather it, you are not only opposed to price fixing, but you believe in the preservation of the competitive system whereby there shall be no crutches given to these individual industries and units, who agree upon in advance as to the filing and knowledge of prices?

Mr. WILLIAMS. As to the first part, that is exactly where I start. I am for open competition all the way through and I get away from it only where under the act like this and under a——

Senator BLACK (interrupting). I am talking about your belief; I am not talking about the act.

Mr. WILLIAMS. I am talking about my belief.

Senator BLACK. Do you believe then, if I understood you, that we should have an act which does give an administrative authority, to one individual or two or three individuals, the right to authorize the posting of prices which can be utilized as the basis for others to fix their prices?

Mr. WILLIAMS. I can say it in three sentences, this way: I believe in absolutely open competition all the way through. That is where I start. Whenever you are given a commission to effect certain desired ends which you find are defeating either the application of this principle that I am talking about, to extraordinary circumstances and conditions, then I would consider getting away from my no. 1 position but would hold the burden of proof very strongly and very heavily upon those who would go away from the position that we should have open and free competition on all things.

Senator BLACK. That being true, since you do agree that there are some conditions under which there should not be competition, the object of competition——

Mr. WILLIAMS (interrupting). I do not say that.

Senator BLACK. Then I misunderstood you.

Mr. WILLIAMS. I did not say there were any conditions under which there should not be competition.

Senator BLACK. I understood you to say that you first believed in free competition and then you believed it should be withdrawn only under certain conditions.

Mr. WILLIAMS. I believe in free competition all the way through, but I do believe in certain regulations that are calculated to serve the purposes of this act, which for the purpose of elimination of unfair trade practices——

Senator BLACK (interrupting). Which means price stabilization?

Mr. WILLIAMS. Not necessarily.

Senator BLACK. Well, what does it mean?

Mr. WILLIAMS. It means the elimination of a sporadic low price, the elimination of which in a great many instances is without effect upon the general price level, and frequently brings the general price level down instead of putting it up.

Senator BLACK. Then you do believe in affecting prices by these agreements and regulations where, as you say, it would prevent a sporadic low price.

Mr. WILLIAMS. I believe that if a sporadic low price, inordinately low, so inordinately low as to be destructive of competitive and fair competition, I believe in the elimination of that where necessary to enable those affected thereby to meet their part of this burden of providing more employment and better wage and better purchasing power, and relieving against this emergency.

Senator BLACK. I want to follow that up with one more question. You do want to trust to the administrative agency to that extent—we won't go to the details—to that extent, the power to say at which price goods shall be sold. That being true——

Mr. WILLIAMS. I cannot sign on "at what price goods shall be sold".

Senator BLACK. Well, at what price they shall not be sold.

Mr. WILLIAMS. That is closer to it.

Senator BLACK. All right. That being true, any interest of the consumer, if we are going to do it, and assuming that it would be to

the business interest to show that anything is below the price, taking away to that extent the competitive right of the public and the consumer, will you not go a step further and say it is the duty of those who want to protect the public and try to do it through an excess-profit tax as an extra precaution, or a limitation of profits.

Mr. WILLIAMS. No; I do not go that way.

Senator BLACK. You would not go that way?

Mr. WILLIAMS. I think you are treating one part of the body for a sore on an entirely different part of the body.

Senator BLACK. I think there is a sore on the entire body politic.

Mr. WILLIAMS. You are treating all of the body——

Senator BLACK (interrupting). All of us are consumers, and some of us only produce tobacco or steel or things of that kind. My idea is that if we are going to give anybody the right to fix the price, even at which goods shall not be sold, all of the consumers have a right to be protected in some way other than the little agency that might be down here which could not state the whole proposition, and thereby by excess profits or limitation of profits accomplish the result. Do you not believe, if we are going to do away with competition—assuming that we are in whole or in part—that we have got to substitute some other way to protect the consumer, and can you think of any other way except by limitation of profits?

Mr. WILLIAMS. I do not see the premise "do away with competition." In my whole philosophy of this competition, you are preserving competition and must preserve competition all the way through.

Senator BLACK. We will agree on one thing will we not, that for a short time it was done in the lumber business, so that some of them all over this country complained that they could not sell their lumber even at a profit if they followed the fixed price.

Mr. WILLIAMS. Or even at a loss.

Senator BLACK. That being true, about fixing prices, and a lot of us agreeing on it, was it fair or right to the people of this country that there should have been a limitation of profits or an excess-profit tax on those individuals who were reaping the benefits of those fixed prices that were driving some of the competitors out of business?

Mr. WILLIAMS. I do not think the lumber provision that you are talking about was justifiable. I think it has turned out that it was injurious to the consumers of this country, but I do not think that an excess-profits tax proposition has anything to do with this particular thing.

Senator BLACK. It did not make any difference how much profit they made by this holding up the prices? That was all right.

Mr. WILLIAMS. I did not say it did not make any difference, but we were off on the wrong foot all the way through. Let me say again that I am no price fixer. I have been notoriously opposed to price-fixing all the way through. I believe the Senator understands that.

Senator HASTINGS. Mr. Williams, I understand your position with price-fixing is that the Government and the representatives of the Government should go no further than to prevent a person in an industry or in a code from selling so low that it would be unfair to the other persons who were only trying to make a normal profit. Is that your situation?

Mr. WILLIAMS. In other words, I am against all price-fixing as such, if I may say it that way. I think that in spite of that that probably

there is wisdom in these provisions that would prevent one man from selling at such a substantial loss that his selling at that price amounts to an unfair practice as against the competitor who too employs workers and pays wages.

Senator HASTINGS. I assume your position is that from the consumer's point of view, that the fellow who is selling away below his own cost and doing it for some improper purposes, is not in the long run of benefit to the consumer?

Mr. WILLIAMS. That is my exact position, and as a matter of fact I suggested in an answer here a bit ago, it has been my observation in at least one instance that where you eliminate these sporadic sales at these unconscionably low prices that amounted to unfair competition, the general price level of the product has come down instead of going up, in spite of the fact that the lowest sales have been eliminated.

Senator BLACK. In line with your answer to Senator Hastings' question, you say that that is to protect the consumers from unfair competition?

Mr. WILLIAMS. Senator Black, may I suggest a correction of the question?

Senator BLACK. Yes.

Mr. WILLIAMS. I did not say to protect the consumers against the unfair competition or practice. I say to protect the competitors of the one who is indulging in that practice, which competitors themselves employ workers and pay wages and therefore we of the N. R. A. have an interest in things not being done to them unfairly that destroy their capacity to employ workers and pay wages.

Senator BLACK. Then I misunderstood it. I understood Senator Hastings to say in substance that you object to this kind of price-fixing because the purpose will ultimately hurt the consumer.

Mr. WILLIAMS. I was misled by the use of the word "unfair." If I may state my answer again, the word "unfair" made me think in terms of competition. If you are thinking in terms of whether or not the elimination of these sporadic unconscionably low sales eventually hurts the consumer in that the total group of consumers pays a higher price for the total amount of goods bought, I did say to that that I do not think it hurts the consumer. In fact, we know of an instance or two in which it seems to have helped the consumer in that while it eliminated these extremely low prices, it tended in eliminating them to bring the price variance closer.

Senator BLACK. Who made the effort to get the provision in the code to protect against low prices? Were these efforts to protect the consumer suggested by the consumers, or were they suggested by the people in business?

Mr. WILLIAMS. The people in business ordinarily suggested them as unfair practices practiced upon them by their competitors.

Senator BLACK. Does the code make any provision with reference to fixing a minimum price on cigarettes?

Mr. WILLIAMS. You mean the manufacturing code?

Senator BLACK. Manufacturing or retail.

Mr. WILLIAMS. In the manufacturing code there are no provisions except those under which the industry is required to pay certain minimum wages—not below certain minimum wages, and work not above certain maximum hours. And the employment conditions. There are no price provisions whatever.

Senator BLACK. I have seen certain complaints in the newspapers—they may not have been correct—about certain drug stores of companies who were complaining that they were compelled to sell——

Mr. WILLIAMS (interrupting). I will clear that territory to you in about half a minute. There is a cigarette manufacturing code which I just described but which asked for and obtained no provisions other than the employment conditions. Separate and apart from that code and proposed and sponsored by people entirely different from the group in the manufacturing industry, there is a wholesale tobacco code and a retail tobacco code, in which there has been permitted a loss limitation provision with which I have had nothing whatever to do and have always refused to have anything to do, as I think you gentlemen know.

Senator BLACK. That does fix it. May I ask you just this question: How do you determine when a price is too low? Is that a very simple process?

Mr. WILLIAMS. That is an exceedingly difficult thing.

From a consumer point of view, prices are never too low. From an N. R. A. point of view, considering what we are trying to administer and what we are trying to accomplish in administering it, I would give you about this definition of a price too low, as one that is so low that it is destructive of fair competition in the industry and impair the capacity of competitors to employ workers and pay wages. I am not speaking of the standard exceptions to all of these price propositions, such as distress goods, and all of that kind of thing.

Senator BLACK. Suppose this business unit itself tells you it can manufacture and sell below the price the N. R. A. fixed?

Mr. WILLIAMS. Senator, if you will let me say two sentences, I can clear a lot of territory right there. When you say "manufacturing", after talking about distributing, we have jumped from one territory into an entirely different territory. Let us get this in mind, and it refers to a question that Senator King asked me yesterday about a speech that I made in New York in respect to the price floors, and I will put that section of that speech in, if I may, so as to have it accurately based.

But let me emphasize this point: In a manufacturing industry, the manufacturer's cost represents all of his cost. That is the distinguishing thing of costs between your manufacturing industries and your distributing industries. In manufacturing industry, therefore, when you are talking about sales below cost, you are talking about sales below his total cost.

In the distributing industries, the distributor's cost, if by his cost you mean his invoice cost—what he paid for the goods—does not represent all of his cost, because before he gets rid of the goods he has certain handling and insurance, and so forth and so on, which varies in various distributing branches from, I would say, 15 percent up, as an average, on his goods. That is not the exact figure, but I am emphasizing only the point that a distributor is in an entirely different position with respect to what his cost is and what amounts to selling below cost from what the manufacturer's is. The manufacturer knows the cost of his goods, and when he has that cost, he is even. When a distributor gets back the money that he paid for his goods, he is definitely in the red.

Therefore, in these codes where you are talking about not selling below cost in the manufacturing industries, you are talking about not selling below total cost.

When you get over into the distributing codes, you will find that the provision, instead of taking that form, takes the form of loss-limitation provision, because if a man sells at his invoice cost, of course he is taking a loss. If his cost of doing business is 15 percent, he is taking a loss of 15 percent. If his cost of doing business is 40 percent, he is taking a loss of 40 percent.

Therefore as a mechanical proposition in your distributing codes, you will find those provisions in terms of loss limitations.

In the retail code General Johnson was presented with an exceedingly difficult question there as to what should be done under the various proposals that were made with regard to that code. He recognized the proposition that if the retailer or if the jobber—the two were submitted together—got back his invoice, he was still possibly selling so far below actual cost, which was his invoice plus his handling charges, as to be practicing a destructive method upon his competitors, which would leave them unable to employ workers and pay wages; therefore a question of percent of percentage was involved—what was a retailer's cost? It was eventually resolved by abandoning the attempt to resolve it and by acting a percentage, adopting a percentage of 10 percent in the Retail Code as a loss limitation, in other words, that he should not take a loss against his invoice cost and handling charges added together, that would be represented by a price below his invoice cost plus 10 percent.

We were talking here the other day about the several hundred codes, under one of Senator King's questions, that had these mandatory costing provisions in them. I do not think I made entirely clear at that time that that type of thing is natural to the manufacturing industries. That is where cost presents its difficulties. In the distributing industries, there is no such problem to be regarded as requiring the establishment of a mandatory cost system with a dis-distributor. It is just a question of what that case of goods cost me, or what it costs per unit, and what is my store help and my rent and my insurance and so forth, all of which are easily determinable things, clear of the complexity that is involved in a manufacturing cost.

Senator BLACK. Suppose you run into one of these questions of cost, and you find that they pay one man $1,000,000 salary and bonus in 1 year. You do not find it, but that is going on, but they claim that their overhead is such that they cannot sell below a certain amount, and that is a price that the others cannot. Would you advocate that the N. R. A. take into consideration in fixing a minimum cost or maximum cost, the amount of such salaries and bonuses?

Mr. WILLIAMS. I am not suggesting that N. R. A. protect anybody at all in the manufacturing business on the recovery of his cost.

Senator BLACK. If it is determined that somebody is selling below cost: Suppose it went into a fixed place of business and you discovered that they were selling below cost, but you also looked at the business expenditures and found that they were paying somebody $1,000,000 in bonus and salary for 1 year's work. Would you recommend that the price be sustained, that he raise that price so as to get a profit even though he was paying that $1,000,000 salary and bonus?

Mr. WILLIAMS. Are you speaking of a case where a man is trying to enable a man to recover his cost?

Senator BLACK. I am talking about a case where you are looking into it and determining what are the actual costs, and in order to determine costs you have to determine overhead and everything else. Do you go into the salaries and bonuses paid in order to fix those costs?

Mr. WILLIAMS. I do not know how those systems will work out in the N. R. A., but I assume they did.

Senator BLACK. If they did not, it would not be fair, would it?

Mr. WILLIAMS. It would not be a perfect costing method unless that was taken into account.

Senator BLACK. You would recommend then that, if they are going to fix cost as a base, they also should have authority and be required to look to see if they are paying excessive salaries and bonuses before they determine what the cost is?

Mr. WILLIAMS. I am not recommending that we even go into the territory, but I am saying that salaries are necessarily a part in the cost, and such.

Senator BLACK. If that is true and you are going to determine that they are selling below cost, in reaching that conclusion would you believe it fair, and you say it is fair to consider whether they are selling below cost, would you consider it fair to investigate to see whether they are paying anybody a million-dollar salary or bonus before you determine whether they are selling below cost?

Mr. WILLIAMS. Your question develops so many issues that I cannot attempt to answer it.

Senator BLACK. I only intended to raise one, and that is that, if the N. R. A. is going to determine that they shall not sell below cost, in reaching that conclusion whether they shall determine whether the salaries and bonuses are fair.

Mr. WILLIAMS. Are you talking of manufacturing or distributing?

Senator BLACK. Anybody on earth that pays a $1,000,000 salary or bonus.

Mr. WILLIAMS. There are two different kinds of propositions in one as against the other on the costing end, although the kind of item you are talking about, of course, must come into any sufficient or proper costing system.

Senator BLACK. In other words——

Mr. WILLIAMS (interrupting). If you will permit me to finish my answer. I am not appearing for N. R. A. supporting anybody in the recovery of his cost, except as it may in the particular instance take on the character of the elimination of an unfair trade practice that is destructive of his competitor.

Senator HASTINGS. And for that purpose, you would not include the overhead at all, would you?

Mr. WILLIAMS. For that purpose, in the distributing industries, the overhead was not considered. As a matter of fact, nothing except the invoice was considered specifically, the invoice in the distributing industries, for the reason that the cost of handling goods varies so much between the big efficient unit and the small inefficient unit, or the other size inefficient unit, the big, even, that there is no way to work the exact figures in any case, which General Johnson solved by picking up an arbitrary 10 percent as a way inside of

cost. It was not a cost-recovery provision, you understand, because the cost was very substantially more than the invoice plus the 10 percent. It was a loss-limitation provision, not a cost-recovery provision.

Senator HASTINGS. Mr. Williams, I had a letter this morning that raised in my mind a rather interesting question with respect to wages, uniform or minimum wages. It calls attention to the fact that "I have been operating a small business in the same location for the past 26 years. Under the N. R. A., no one in my class will be able to survive. There are chain stores here where the clerks wait on more people in 1 day than a clerk would serve in a week out of a little fellow's drug store selling garden hose, and grocery stores selling motor oil. Under the N. R. A., the wage rate is the same to both clerks. It seems to us that the man that does six times as much work should be paid more." Then he added a postscript: "It seems strange to us that no one has mentioned units produced per man-hour embodied in the N. R. A. code." I was wondering whether there was any remedy in your plan for a situation like that?

Mr. WILLIAMS. That letter, as you describe it, presents to my mind the showing of the absolute necessity of a development in whatever administrative unit handles N. R. A., of a proper principle to be applied in the establishment of differentials between one area and another, probably in the first instance, one type of operator and another, as is the case you refer to. I think it is a matter of going further. That as an example, if I may say it, of an attempt to apply as we had to attempt to apply in the first instance, and in the haste and the necessity of haste in the early days of code making, of a general rule. General rules do not go very far when they cover details.

Senator HASTINGS. He adds another paragraph which might interest you, as follows [reading]:

> Yes, it is a football game as was said in Washington, but the little fellow had no quarterback and no representation. He is in the game trying to stop forward passes thrown by such stars as S. Clay Williams and William Green. He is back to the 1-yard line, no shin guards and no headgear. Please, sir, blow the whistle and save this man. [Laughter.]

I was interested in the first part of this letter because of the fact that that situation undoubtedly does prevail.

Mr. WILLIAMS. He has a fundamental situation that must in the end be served by this N. R. A. if we are going to be entirely fair about the situation and not be hurtful.

Senator CLARK. He is liable to be put out of business before you get around to serve him, is he not? Is that not the difficulty of a man in that situation?

Mr. WILLIAMS. That is a possibility in that situation. All of you have in mind, I am sure, that the exemption of small operators and operators in small communities, those two exemptions were suggested as meeting situations of that kind.

The CHAIRMAN. Are there any other questions from any other of the committee men?

Senator CLARK. I want to ask Mr. Williams a few questions.

Mr. WILLIAMS. Let me add this, that those exemptions—add this to the other answer as given, admit of great scrutiny. Those exemptions apply to the little operator but do not apply to chains, which is a pertinent part of that answer there.

Senator CLARK. This question may possibly have been asked of you before while I was necessarily in another committee meeting, but it is a fact, is it not, that N. R. A. relies principally for the enforcement of compliance on extra-legal methods; in other words, the boycott is the principal weapon of N. R. A. in compliance?

Mr. WILLIAMS. No, I would not say that it was. I would not say that it relies principally on extra legal. I have to stop and look back at that extra-legal phrase just a little bit, Senator, if you will allow me.

Senator CLARK. Go right ahead, Mr. Williams.

Mr. WILLIAMS. It presents this question. Take legal and extra legal, one against the other. Of course, nobody is taking any issue with the fact that "legal" includes everything declared up to this time as being legal. We do not get into any trouble there.

We begin to get into trouble, though, when we begin to entertain the question as to whether or not a lot of things are legal that have not up to now been declared legal, and that is the twilight zone. If the things in that zone are eventually going to be declared legal, then the term "extra legal" is not appropriately applied to them, for the reason that while not having it now been adjudicated legal, they are nevertheless by way of being adjudicated legal when reached.

The other classification in that territory, of course, is a group of things that lie beyond that line in which everything has heretofore been declared legal, but which hereafter are going to be declared illegal, so in that twilight zone we have a lot of things that are not yet declared legal, some of which eventually presumably will be declared legal, and some others which will be declared illegal.

Senator CLARK. I think we can agree about this, that the boycott was universally under our law illegal for many, many years, was it not?

Mr. WILLIAMS. We have not anything to which we have ever given officially the name "boycott" and yet there is use of the "blue eagle" of the possibility of an effect that is closely akin to the effect of the application of the boycott.

Senator HASTINGS. Is not your real way of enforcing this code by that boycott? Is that not the most effective way?

Mr. WILLIAMS. It has proved a very effective thing. You are right about that.

Senator HASTINGS. If you say that the boycott has not prevailed in N. R. A., I think you will find that the evidence is overwhelmingly against that.

Senator CLARK. As an initial proposition, the Government boycotts anybody who is not under the "blue eagle", and the Government is the biggest purchaser in the country right now.

Mr. WILLIAMS. I make the admission right here that the thing we have been doing works out to a result identical with the result that you get from a boycott. I do not want to be understood as denying the existence of the practice you are talking about, but I do admit that I am not calling the word "boycott" as the exact description of the thing that we have been doing.

Senator CLARK. Excuse me. This much is undoubtedly true, is it not, that if a group of retailers had gotten together prior to the code and said, "We will agree among ourselves under penalty not to buy of any manufacturers goods that do not contain a certain manufacturers' label", they would have been in grave danger of rendering themselves liable to prosecution?

Mr. WILLIAMS. I think so.

Senator CLARK. That is precisely what has happened under N. R. A.

Mr. WILLIAMS. A good deal of that has happened. Let me say one generality in an opinion of my own. I do not like anything that savors of a boycott any more than some of you gentlemen do; and yet, considering the lack of success in this country of enforcing upon the people or compliance at the hands of the people, these things when the people or segments of the people are resistant to those things, my personal view has been that in a great many of the territories touched by N. R. A. where you have difficulty in establishing compliance, more progress might be made through some kind of insignia used to rally the support of public opinion in lieu of the force method. I do not think it has any commercial application, but in the windows in London when you see a bottle of liquor sitting up there and the king's insignia and the bar or line "Appointment by His Majesty, the King", there is——

The CHAIRMAN. It makes the liquor taste a little better? [Laughter.]

Mr. WILLIAMS. I am not sure about that, Senator, but it has in it the germ of an idea that here is a producer of a commodity, whether it be liquor or bread, or what-not, who has been officially recognized as being a certain thing.

If we could work by a system under which there were an insignia which when used on a product indicated to the general public of this country what the manufacturer of this product is doing in certain territories—wages and hours, for instance, and avoidance of child labor—the things that his government and public opinion of this country, which should be one and the same thing, thinks should be done, and by keeping that forward could carry to it public support, maybe we could go quite a long distance without having the objections that lie in some of these threatened boycotts. My experience with the American citizen is that they do not drive half as easily as they are led.

Senator HASTINGS. Mr. Williams, do you not think it has to be admitted as true that General Johnson bit off more than he or any of his successors could successfully chew in the administering of this N. R. A.?

Mr. WILLIAMS. I think that in accepting the enormous task of administering N. R. A. he undertook, and knew that he undertook, a thing that was impossible of perfection of performance, but having said that, let me say that I think General Johnson did with that task more than I think any other man could have done with that task under the circumstances. I am a great admirer of what General Johnson did under those tumultuous days and treading through all of this new territory and having to walk fast instead of stopping——

Senator HASTINGS (interrupting). My only criticism of him is that he undertook entirely too much.

Mr. WILLIAMS. If we will change it from the undertaking of General Johnson to broader territory and say it this way, that I think the attempt to apply N. I. R. A. to every little industry and every little community in the country——

Senator KING (interrupting). Of purely intrastate character.

Mr. WILLIAMS (continuing). Was a mistake, I will agree with that, but I do not want it, Senator, on what General Johnson undertook as against what this act authorized General Johnson, and as a matter of fact required General Johnson to undertake.

Senator KING. Are you not trying to carry out all of General Johnson's attempts to carry out, and a little more?

Mr. WILLIAMS. I do not think so, Senator King.

Senator KING. You still approve the boycott, do you not?

Mr. WILLIAMS. We are still approving of the use of the Blue Eagle and also of the phrase "Made in the United States", which is in general use, and is subject to the same charge of boycott as is the Blue Eagle.

Senator KING. Do you approve of this policy? I have a letter here yesterday from a young man who had been told that a new code had just been signed called—I have not the official title of the code here, but it was looking after garages and repairing automobiles—and he was informed that there were two or three hundred thousand of the boys that worked in the garages, the repair shops making repairs, and they would have to pay an assessment, and that the man that was chosen to enforce the code was going to get $15,000 or $20,000 a year, and that though he lived in a remote part of the United States, he would have to work only so many hours and could only do so much and would be subjected to the same conditions that somebody in New York would be subjected to, and that even if he did not want to come under the code, he would be compelled to pay his assessment, and that if he did not come under that code, the vendors of parts required in repairing, the retailers and the manufacturers would be forbidden to sell to him because if they did they would be violating the code and be subject to prosecution; therefore he would be boycotted and be driven out of business, and he wanted to know if that was true. I told him that from the information I had I was inclined to think it was true.

Mr. WILLIAMS. I think the case that you describe, Senator King, presents another one of these instances of the necessity of the development of proper differentials in a rule for application at one place and against another. I think it is an administrative matter rather than a defect in the law.

Senator KING. Do you think that the power ought to exist anywhere to compel him to submit to regulations of a code, although it took them 18 months to get it signed?

Mr. WILLIAMS. I think this, and it is wider than your question, but I cannot answer your question without going wider than your question.

You have to look at your proposition in two or three ways, legal and practical, and from a practical and common-sense point of view, too. Legally, if I do not misread the status of the law as determined by the courts of this country up to this time, we do not get into a great deal of difficulty in applying reasonable regulations and effecting compliance to reasonable regulations in what we might call the great national industries of this country, who admittedly and known to themselves, are subject to regulations as being in interstate commerce. We do not have a great deal of trouble in that territory.

Go over to the other territory that you examined Mr. Richberg so much about the other day, that is exemplified by cleaning establishments and hotels and restaurants and those purely localized things, we have a maximum of difficulty in those service trades which are localized to such a great extent and which are further removed from the clear application of interstate commerce and therefore Federal control, than the others.

We get a third of our trouble approximately in compliance out of that single group.

Between those two groups, you have got your great distributing and mercantile groups which lie a little bit closer to your interstate commerce territory possibly than the service groups themselves do.

So to analyze from the legal point of view as one territory that lies pretty closely to that which involves the great national industries admittedly engaged in interstate commerce, at the other extreme, the third one over, you have got these almost purely localized operations, the cost of which in one community does not directly affect or necessarily affect the cost of another in another community.

Then you have got your intermediate group. That is your legal status. Your practical status happens to follow along about the same line, and our experience——

Senator KING (interrupting). My question was directed to that particular case of this young man, and I ask you whether or not the new code would superimpose upon him the difficulties and obligations to which I refer. You could answer that yes or no. You are a lawyer, or have been one, and a very intelligent man.

Mr. WILLIAMS. I misunderstood your question. I thought your question was, did I think that this N. R. A. ought to make that application of people. With respect to that particular code, I would check and see whether or not that is a possible effect of that code and bring you the answer.

The CHAIRMAN. Have you finished your explanation?

Mr. WILLIAMS. As far as I care to go; yes.

Senator LONERGAN. I want to ask Mr. Williams one question. Do you feel that Congress has the power to pass legislation to include business under N. R. A. that is solely intrastate?

Mr. WILLIAMS. My personal view is, no. There is a great deal of different view to that.

Senator LONERGAN. Is that not what Senator Hastings referred to?

Senator HASTINGS. Yes.

Senator LONERGAN. Thank you.

Senator HASTINGS. Mr. Williams, my understanding is that the N. R. A. makes examinations from time to time of the various industries to ascertain whether they have lived up to the wage code, and that if they have not, if they find that they have not, they send to the manufacturing concern a bill for the difference and they collect the money and make the distribution itself among the employees. Is that correct?

Mr. WILLIAMS. I am not sure of your mechanisms. It is true, and I think this in substance answers your question, that where under a code a given manufacturer has failed to live up to the wage requirements and has paid less than the wage required by the code, there are many instances of the N. R. A. busying itself with effecting a

restitution to the employees who were defeated of the higher wage through the violation of the code in paying the smaller wage. If the mechanism through which it works out is important, I will check that.

Senator HASTINGS. I have an instance in which a bill was sent for 16 weeks for $21,715.52. In a little while another bill was sent for the same 16 weeks for $37,654.04, and then a further time, further along, for a period covering 36 weeks, a bill was sent for $16,603.44.

Mr. WILLIAMS. Is all of that wages?

Senator HASTINGS. Yes. I was wondering what the difficulty was, in finding out in the first instance whether they had violated the code or whether they had not?

Mr. WILLIAMS. We cannot have somebody everywhere watching everybody is presumably the answer why we do not know about those things the minute they start to happen.

Senator HASTINGS. Yes; but here is an instance where you first render a bill of $21,000, and then in a little while you render another bill for $37,000 covering the same period, and a little while later covering 20 more weeks, there is an addition of 20 weeks, and you send a bill for $16,000?

Mr. WILLIAMS. It may be a matter of different plants involved. It may be one other thing, and I am not speaking to that, because I do not know that case. Sometimes when these questions are raised, there is an allegation made that the manufacturer or the code member, whoever it was, short-waged a certain number of people for a certain number of hours. Upon the appearance of the person charged, it may develop that there were less. It may be shown that certain of them were not under the classification and were thrown out. On the other hand there may be further discoveries of others who were affected in the same way, arriving at a more accurate figure through that further information, either by addition or elimination.

Senator HASTINGS. I have several of those instances, and I would like some time before we finish these hearings for somebody in your department to explain in detail just how they do that.

Mr. WILLIAMS. If you could give us the specific cases, we could bring you the detail of all of that.

The CHAIRMAN. I would like to say that there is a resolution here, introduced by Senator Metcalf, as follows:

Resolved, That the United States Tariff Commission is directed, under the authority conferred by section 336 of the Tariff Act of 1930, and for the purposes of that section, to investigate the differences in the costs of production of the following domestic article and of any like or similar foreign articles: Cotton manufactures, included in paragraphs 903 and 904 of such act.

Senator KING. I move it be reported favorably.

The CHAIRMAN. Without objection, that action will be taken, and Senator Metcalf, you may make the report.

The committee will recess until 10 o'clock tomorrow morning, at which time Mr. Darrow will be on the stand.

(Whereupon, at 12 m., a recess was taken until Wednesday, Mar. 20, 1935, at 10 a. m.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

WEDNESDAY, MARCH 20, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to adjournment, at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Connally, Costigan, Clark, Byrd, Lonergan, Black, Guffey, Couzens, Keyes, La Follette, Metcalf, and Capper.

The CHAIRMAN. The committee will be in order. Senator King has something he wishes to put in the record.

Senator KING. The other day I invited attention to the fact that the President of the United States had asked the Federal Trade Commission and the N. R. A. to make a report with respect to the basing-point system of the steel industry, and so forth. The Federal Trade Commission within the time prescribed submitted a report to the President, and the President ordered it released. I have a copy of the report here and I would like to read into the record some excerpts from it.

The CHAIRMAN. Very well.

Senator KING (reading):

> Before there can be any consistent determination of public policy regarding price fixing—

And I will put in a couple of pages before that, which calls attention to the price fixing in this industry—

> by organized groups of competitors, the factual issue must be faced whether there is price fixing. So long as the idea is entertained that the factual condition may be an expression of competition rather than of a price-fixing combination, there can be no logical treatment of that condition. In economics, as in medicine, diagnosis is fundamental. The diagnosis which the Commission makes is that the basing-point system not only permits and encourages price fixing, but that it is price fixing.
>
> It is price fixing so absolute that purchasing agencies of the Federal Government are reduced to a position of such helplessness that they literally place each bid in a separate capsule, shake them up and draw one out of a hat. It is price fixing so rigid that violations of the delivered price are actually penalized at the rate of $10 per ton even on sales to the Federal Government, while fines have been assessed on sales of as little as a fraction of a ton. It is price fixing so self-centered that as the Commission pointed out in its former report, the advantages bestowed by nature on particular sections or communities have been nullified.

The two following paragraphs I shall insert without reading, and part of the next two pages.

(The portion inserted but not read is as follows:)

Not having only that, but the immense sums invested by Government in improving the gifts of nature and by private industry in the faith that natural advantages and their improvements would accrue to the benefit of the buyers, fabricators, and consumers of steel as well as the producers, have been in effect largely appropriated by the producers. The basing-point system with its supporting formula in essence withholds the gifts of nature from the consuming classes and monopolizes them in the hands of the producers and sellers of iron and steel. Only aims of a blindly selfish character can account for the arbitrary abnormalties and flagrant fictions which are inherent in this basing-point system.

The necessary implication of statements by leaders of the industry is that the basing-point system in steel is a price-fixing system. As an instrument of price fixing, it has the sanction of the code whose provisions make its operation more definite and certain without in any degree lessening its inequities. The inequities of the system, whether for producer, fabricator, or consumer, arise fundamentally out of this fact, that it depends upon artificial and wholly arbitrary arrangements in the making of price, rather than upon competition automatically and impersonally working out into a price accurately reflecting a balancing of supply and demand forces.

The inequities of the system for the producer of steel lie in the fact that except for a few powerful interests in the steel industry the producer has little to say under the system as to whether his mill shall or shall not be a basing-point mill, as to what the price at his mill shall be, or as to what shall be the differential between the price at his mill and that of any other mill. Mill prices of the individual producer therefore may be totally unrelated to his own costs and to the several market factors which, under competition, would determine price.

The price differential of two steel basing points may remain, in some notable instances has remained, constant for many years during which the prices themselves change. Yet it is inconceivable that all the price-making factors affecting the prices of two widely separated points, if permitted to operate without artificial restraint, would continue in such a balanced relationship as to preserve a constant differential over a period of years. Nor would it be possible under any price-fixing system to discover and maintain a parity between such points that would reflect the constantly changing relationship of supply and demand factors. If this be true it follows that price fixing must of necessity bear unequally and not in accordance with natural causes on producers differently located.

For the fabricator of steel, other than that used in an identified structure, the inequities of the system arise, in part, from the artificial disparity of basing-point prices for steel on which competing fabricators must base the prices at which they buy. Such a fabricator, unless located at the basing point governing the delivered prices of the territory in which he wishes to sell, is at a marked disadvantage in competition for the business of that territory (except as to his own local point) with a fabricator located at such basing point, even though the first fabricator be at or near a producing point and even though he be freightwise nearer to the points of delivery than the second. Moreover, the parity of basing-point prices making the delivered prices of adjoining territory determines, other things equal, the extent of the territory in which one fabricator located at or near one basing point has a competitive advantage over another fabricator located at or near the other basing point. Consequently inequities for such fabricators must inevitably result from any arbitrary dictum that makes one producing point a basing point and another a nonbasing point or that artificially fixes the differential between basing-point prices.

Furthermore, gross inequities for fabricators of steel, likewise caused by the artificialities of the basing-point system in steel, result from the quantity extras, increase in some of which has been very pronounced under the code. These extras seem to bear no proper relation to the differences in costs of handling and selling and become an unfair burden on the small fabricator in competition with the large.

The inequities of the basing-point system in steel for the consumer are principally a matter of effects on the consumer's price level. The system's artificialities find expression in the rolling of steel at relatively uneconomic points of production and therefore in high producing costs; in excessive cross freighting and therefore in high delivery costs; and in far-flung selling territory and therefore, in high selling costs. These several unnecessary costs occasioned by the use of the system are reflected in the price of the product already swollen to protect the producer having a heavy overhead, out-of-date equipment, inefficient management, or exclusively all-rail transportation as against the water or other low-cost

transportation of a rival concern. As the semifinished product passes through the channels of fabrication and distribution its price is pyramided by percentage margins on the unnecessary as well as necessary cost and profit elements and finally emerges to plague the consumer in a price level which he can with difficulty meet and which consequently retards the producer's operations. Moreover, the inequity is not for the consumer of steel alone but for consumers and producers of every kind of commodity, in that national recovery is delayed through high consumer prices caused by artificially high production and distribution costs and profits.

Generally speaking, when a price-fixing combination is successful in raising prices, consumption will decrease. The process of holding for a fixed price in the face of decreasing consumption means reduced employment and reduced income for labor. If consumption continues to decrease, a price-fixing system calls for still higher prices in order to protect profits and thus a new cycle of reduced consumption is initiated.

It is a most significant fact that the steel industry was able to show satisfactory profits for the first 6 months of 1934 without operating to more than half its producing capacity. Profits under such conditions necessarily involve prices per ton which include a high margin over cost of production. It is theoretically possible to fix prices at a point where profits would be shown on a much smaller percentage of capacity. The consuming public would doubtless revolt against the exaction of prices that would provide a profit on an investment of which only a minor percentage is being used. It has borne more or less patiently the burden of prices which provided a profit on an invesmtent of which only 50 percent was used. Recent trade press reports state that some of the younger and stronger independent producers of steel are now contending for a drastic reduction in prices on the theory that it is better business to have a high volume of production on a reduced margin of profit than a small output at a high price. Such a position is consonant with the views of the Commission above expressed and with any logical long-run view of economic recovery.

The situation involves social and economic consequences of far-reaching and fundamental import. If the capitalistic system does not function as a competitive economy there will be increasing question whether it can or should endure. The real friends of capitalism are those who insist upon preserving its competitive character.

Senator KING. Now, I come to the recommendations [reading]:

The Executive order called for our "recommendations for revisions of the code." The duty which thus devolves upon the Commission is a serious one.

Then they state three or four theoretical propositions, and then state [reading]:

The Commission is profoundly of the opinion that there is no sound economic foundation in a system of price fixing, whether it results from the cooperative activities of industry or whether it be imposed upon industry by governmental action.

Men who have invested their lives and fortunes in the manufacture and sale of goods should not, in view of the public interest, be intrusted with the responsibility of fixing prices. They will generally act with an eye to dividends rather than to the public welfare. This is no arraignment of the integrity of those who conduct business, but is a recognition of their humanity and of the soundness of the principle which underlies every judicial system, namely, that personally interested parties shall not be presumed to have unbiased minds.

Moreover, there is the difficulty of enforcement. If business assumes the responsibility of cutting off supplies, boycotting, or otherwise penalizing those who fail to adhere to the price system or to the prices which that system is the means of unifying, business to that extent employs selfish practices not conducive to the public interest. The use of such methods would be to regulate prices by the use of force exercised by men who are responsible neither to the people nor to the Government, and who have their own personal ends to serve. Industry must perforce come to the Government for the enforcement of its own edicts, and the signs that this is the inevitable outcome are abundant.

Later, I shall read into the record further excerpts from this report.

The CHAIRMAN. The committee will be in order and you gentlemen of the press with your photographs, will you proceed as quickly

as possible to complete your pictures of Mr. Darrow, if he does not object.

STATEMENT OF CLARENCE DARROW

The CHAIRMAN. Mr. Darrow, I suppose the reporter has your full name. You may proceed in your own way. You know what the resolution before the committee is, and the committee at the same time is trying to consider the suggestions as carried in the President's message with reference to the N. R. A.

We will appreciate any criticisms or any constructive suggestions that you might desire to offer. So you may proceed.

Mr. DARROW. I do not know about the constructive suggestions.

I was appointed as chairman of what they called on paper the "Review Board." That grew out of criticisms Senator Nye and Senator Borah and perhaps others had made of N. R. A.

The Review Board was supposed by me at least to review anything that they thought should be reviewed that had been passed by the other Board.

I did not stay so very long. There were a lot of things in N. R. A. that I know very little about, and I shall try to confine myself to things that I do know something about.

When I came down here to Washington, I found that they had made preparations for me. There were some offices that Mr. Johnson had been kind enough to save for me next to his or close to them, and as I had had no conversation with anybody, I rather gathered from conversation that it was to pass on matters that were a sort of review of what they had done and growing out of the criticism of this Board, that it had helped the big fellow who did not need it and hurt the little fellow who did need it.

Mr. Richberg I had known, and we had been friends for a long time, and I had nothing against Mr. Johnson before or since, but I felt that it would not look very good to the public at large if a review board, obviously meant to examine the question whether little business was getting the worst of it, tied themselves up too closely to the other board. Maybe nobody thought anything about it excepting I myself. I have been a lawyer so long that I am very suspicious of almost everything.

Well, no trouble came out of that. We employed the space in another building, in fact the hotel where I had stopped for many years, the Willard, and they gave us all the opportunity that we needed for space without any expense.

We organized and set to work as we saw it. I knew nothing about the N. R. A. when I came here; I had no opinion about it one way or the other. I had never studied it, I am not much of a politician and did not want anything or had not anything to give, so that was all right.

Then I set to work as best I could to find out. I had not been here very long until I rather got the idea that the N. R. A., in effect, made it easier for the people who had it all and made it harder for the people who did not have it. I did not take any pains to broadcast that, because it was a sort of a tentative idea, made without having any evidence in the regular way, but we all form opinions that are of some importance.

We went out to organize, we got our board organized in a week's time, and began taking evidence to test various things that had been attacked and various things that were prominent in the investigation before.

I think we got the best evidence we could in the quickest way. We had been going ahead, and I suppose some of my questions to the board have looked like I was doubtful of the N. R. A., which I was, and am, but that does not count.

Anyway, I had been there about 2 weeks, perhaps possibly 3, and I received a letter from the President saying that they were in a hurry to get the report in and get through with it. Well, I was not anxious for a job, but I supposed I had settled down for some little time and I would have a chance to get a chance to get acquainted with the Senators and Congressmen and other things like that, and I suspected that because they gathered the impression which they might well have gathered that I was not very favorable to the N. R. A., but I did not complain any. I just hurried up, that is all. I intended to find out what I could.

I answered the letter, I think, stating about how long we had been here, which I suppose he knew any way, and that it would take us some time to get a report.

Well, I think that during the 3 months that we were here, I had three letters on the subject of the necessity of speed, which did not seem very encouraging to me, not that I would not rather be at home or that I cared either anything about the compensation or the glory, although I would rather have the compensation.

I went ahead with the Board, and began, and I think we stayed here 4 months, wasn't it? We were very sure that we could not stay any longer if we wanted to, and I for my part if I find out that I am not wanted, I generally manage to get out of the way anyhow, especially as I was not personally interested. So we wrote our report, and they were very kind to us in our first report.

The law under which we acted, or the order—whichever it was, the order—provided that we should report to the President. Thereupon we reported to the President. I do not know what the President was supposed to do, whether he would put it in the closet with the clothes or what he would do, but the report was to be made to the President. I did not see it for several days. Certain Congressmen and Senators began asking questions about what had become of it and when it would come out. I said I did not know, that I had given it to the President and I had supposed that he would tell it to the people. And still we waited breathlessly to see what happened to this report. We did not want to go over it again.

And to make a short story long, 3 weeks after it was delivered, on a bright Sunday morning, this report appeared in one of the papers preceded by a report of Mr. Richberg and followed by Johnson's, or vice versa—I don't know which. At least, they got all the paper. I had not been down here long enough to stand in with the boys, and it came out in rather an unfortunate way to suit our ambition and to serve any such purpose as we wanted to have it serve. I do not know whether there was any room in the papers to read it.

There were a few people who did read it, however. It was gotten up with some care, and I think a pretty good job. I don't know what anybody else would think, but this was rather a cooling business

and we did not know what to do about it, but I did not like to be driven off too quickly. They were enjoying it and I thought we would give them some more to enjoy, and so we stayed on until we got out three reports. Do you remember how many cases we investigated?

Mr. MASON. Thirty-four codes. Three thousand three hundred and seventy-five cases.

Senator CLARK. That was 34 codes out of something over 600?

Mr. DARROW. Yes. But what I did—I speak as if I were the whole board—I was not—what we did when it looked like our demise would come soon was to take the most important codes so we took most of the largest ones, the steel company, the oil, motion pictures, and in short we took the largest ones, because we did not expect to live long.

We had great trouble in getting them circulated. They had a fine stand-in with the newspapers here, and I delivered no more to the President. I did not see that the law said it should be delivered to him so that he could put it in the closet, but carry it to the people, so in surreptitious ways and in other ways we put this out so far as the papers would publish it. A good share of them did. It did not have the publicity that was given to the articles that were published with our first reports, but anyway, we stayed nearly 4 months.

We were given an appropriation of $50,000 to start with, which looked a little small as compared with the appropriations the N. R. A. had, but still they got here first. We took account of stock and found we had $5,000 left out of the $50,000 at the end of 4 months, so I thought we did pretty well. We did not hire any expensive offices and we were given room whenever we wanted a hearing, at the Willard, and altogether we were quite economical about everything except our salaries which we drew regularly, but when it got down to $5,000 we could not see where we could get much further and saw no great hopes of getting any more money, so we stopped with the third report.

That, of course, had given us a good line on the N. R. A. Anybody that is quick on the trigger, or rather slow even, could find out in 4 months what it is all about, or at least get an opinion, although he might not understand every code, especially if he had not read them, but it was a good fair sample, and we knew the time was short, and so we drew a check to the Government of the United States—I don't know who got it—for the $5,000 and went home.

Of course, I suppose I learned something, had a fairly good time, and did not have any grudges. They got here first, and, of course, they wanted to keep their first, which was all right. [Laughter.]

I did find out a great many things I think about the N. R. A. I do not know what you gentlemen would like to hear. Do you want to have me go on or to ask me questions?

The CHAIRMAN. I think it is better for you just to make your statement, Mr. Darrow, and then any of the committeemen who desire to ask you questions, may do so.

Mr. DARROW. Very well.

The CHAIRMAN. I think it will save time and be better for you.

Senator KING. I think if Mr. Darrow has any opinions resulting from the investigations concerning the N. R. A. we would be glad to get them.

Mr. DARROW. Well, I will proceed with that, that is what I was going to do.

I formed some opinions. It does not take me so very long to form one. I sometimes have to unform them when I form some opinions on a question.

The outstanding opinion was that the N. R. A. was gotten up to help "big business", and they could not help big business very much unless they took the business away from the small fellows. We arrived at that conclusion from what seems to be perfectly obvious and undisputed evidence.

I know something about big business more than small business, and my sympathies I am free to say are all with the small fellow. If there were not so much big business, there would be more small business, much more, in my opinion.

Big business has all of the advantage, and the N. R. A. very materially increased that advantage, in my opinion. Big business exists because they have got keen men at the head of it, they have got plenty of money, and they can advertise in the leading newspapers, fences, and barns, and any other way. They not only can, but do.

Little business is supposed to pick up the crumbs that are left to fall from the rich man's table. They are made up of people with small capital. They cannot take a page in the Saturday Evening Post and they cannot spread broadcast over the barns and fences and all over, the story of what wonderful values they have. They cannot tell that.

Take for instance the manufacture of tires, automobile tires. There are a few companies who advertise everywhere and who get the great bulk of the tire business that goes the way that advertising takes it. The little fellows generally operate in the small towns. They have not large capital. They can make just as good tires as the big ones. The fellows that got the tire don't make them anyhow. The little fellows make just as good tires.

Now, what would happen to them? They could wait until doomsday and they could not find anybody to come to buy their tires, so one way, one method of distributing them is to sell them to the department stores and the department stores distribute them. They make their own tests and they are probably just as good as the others. I am not speaking on the value of tires from observation for I never have had an automobile, but I know what is done.

The only possible way that the little man can live is to charge less for his stuff than the big man does, and the big fellows have to charge because their expenses are great. They are lavish in the expenditure of money. The little fellows save that. They may be the best tires made. When it goes to a department store or any such place as that, they are tested, as I understand it, and people are just as willing to take their tests as they are to take one from the manufacturers.

That is just an example. There are lots of small dealers in a small way in America, not so many as there were, though, and they will get less and less under present conditions, but I am a poor prophet. But suppose they destroy all of the small business that there is in this country; what would be left? Somebody has got to buy the rich man's goods. They do not swap with each other. The great mass of people in this country are not rich, they are poor, and they always will be as long as business is run as business is today. They are poor,

and they gather up what is left, and of course there is a great deal less, because this is a big country, and in the waste places and the vastnesses of the desert and in all of these byways, they are inhabited by human beings who have wants and desires and who have to fill them the best way they can, and the small business has a field, not so easy.

It must always be small business; it produces cheaper and can produce cheaper, for they have none of the great expenses, and it has a considerable amount of business from other small people everywhere.

Of course, to me, I look at this whole industrial question as a fight for life on the part of those people who have little to spend. They do not hire expensive lawyers. I get a case from them once in a while, but I am not expensive. [Laughter.]

If we do not destroy it, there will be nothing but masters and slaves left before we get much further along. If all business is done by big business, then they will have to distribute in some way themselves to the small people that live in the country towns and in the country where this same thing is going on. I do not care how small the business is, the concentration of wealth is going on, in a measurable degree at least, and it looks almost as if there were nothing to stop it. It is almost a hopeless job to ally yourself to the people that need you the most, and the rewards, as many count rewards in this world, are very, very few.

Well, there is no sort of question but what small business has suffered terribly since the passage of the N. R. A. It would have suffered without it, but to no such extent, and they might have found ways to combat it, which they cannot find now and have not found, and I do not know whether we ever will find it. I am not an optimist. I may be an idiot, but I am not a cheerful idiot. [Laughter.]

I try to look at these questions as these questions are, and there is no bright and happy outlook based on reason for the common people of this country. I think this movement is going on faster than it ever did before, much faster. Nothing has stopped it and nothing has been undertaken of this sort except this movement which did not reach any very great peak. It is obvious, one does not need examples, one only needs to grasp the facts and reason from them. It is perfectly obvious that big business has the advantage everywhere. Anybody only has to watch the advertisements in the papers, and everybody is familiar somewhat with most all of these big institutions, and they know what their holdings are and they know what a grasp they have upon this country.

We tried to get evidence on this question. We tried to get the steel company in. Nothing doing. Finally they did send a man in. He was a very high official in the law department. He said he was going fully into this case. He brought in one witness whom he asked where he lived and why and how and everything he could think of, and I told him the time was fleeting and I would like to have him get down to the case, but that did not do any good. He kept on asking the same things, and I finally—I speak of "I" because I was the chairman and did the talking—and I said I had heard enough of this and the board had heard enough of that, and I wanted him to go on to the case. He said, "This is preliminary." I said, "it is too much preliminary; we have not got the time." And finally he was there until noon and he gathered up his papers and went out and said that so long as he did

not have a proper opportunity to testify, he would not come back. So that was the end of the appearance of that company.

The oil company made an appearance of a half day. It was utterly out of the question to get them in. They knew what they were doing. We had no power to issue a subpena, we could not make anybody do anything. All of the forces of the Government were on the other side, and we took what evidence we could and tried to render an honest report on it. Whether it is a good one or a bad one, those who read it would have to decide for themselves, but I think it was meant to be the facts as we found them. I do not know, perhaps I have been talking too long. Maybe you would rather ask me questions.

The CHAIRMAN. Are there any questions of Mr. Darrow.

Senator COUZENS. Have you any substantial evidence in your mind, Mr. Darrow, any specific cases, where the N. R. A. did damage the little business, or is that all in your report? If it is, I will not ask you to repeat it here.

Mr. DARROW. Well, it is not all in the report. We got many letters about it. Do you know whether we have any of those now, Mr. Mason?

Mr. MASON. They were all turned over to the N. R. A.

Mr. DARROW. Mr. Lowell Mason, who was general counsel for the Review Board, says that it was all turned over to the N. R. A., but I get letters every day, pretty nearly.

There was a great deal came from the small lumber men in the West and in the South. There were a good many from all kinds of industries, and I have had a great many since we went out of business who tell that many of their people have gone out of business.

I am afraid that I cannot give you just what you want very definitely, but I think you would not have any trouble to find it if it is known to the country that you want it.

The CHAIRMAN. Are there any other questions?

Senator KING. Did the testimony which was given to the committee before your committee, clearly indicate the paramountcy or the power of the large industries, the large units of industry, over the smaller units of industry?

Mr. DARROW. Well, I think so. I don't know that they have made it quite as plain as I have tried to make it here. I think we have it in all of our reports. We could furnish you a copy of any of them.

The CHAIRMAN. Every member of the committee has been given a copy of the reports.

Mr. DARROW. They have?

The CHAIRMAN. Yes.

Senator KING. From the hearings or from the testimony taken, did you form an opinion as to whether or not the tendencies and the practices of the N. R. A. result in price fixing of commodities?

Mr. DARROW. Most of it was price fixing. I say most of it a little carelessly, but very much. All along the line was price fixing. You will find it in many of our reports.

Senator KING. The reports challenge attention to that question.

Mr. DARROW. You see, ordinarily when any public body deals with a big corporation and they are going to buy something, they fix the minimum price at which the corporation should sell it for the most he can get. He cannot go above a certain amount, but there is not

anything plainer in this case. In this instance they said they could not sell for less. The sky was the limit going up, but they could not go down. Whatever went for the big one went for the small one, and he could not go down in the way I am speaking of. If the large man and the small one are going to sell at the same price, the big man is going to get the business.

Senator COUZENS. From your observations, Mr. Darrow, is there any part of the N. R. A. Act that is worth saving?

Mr. DARROW. I do not know that I could answer that as intelligently as one should. I really was not there long enough to be familiar with everything in it, but I think the basis of it is very bad.

Senator COUZENS. Did you form any conclusions with respect to any advantages or disadvantages that may accrue to labor from the enactment of the law?

Mr. DARROW. I do not think it affects labor, although I know that many laboring men or their agents believe it does. The price of labor is not fixed by the price of products. It is fixed by the same thing that every other price is, by supply and demand. As long as labor unions are strong and can control their product, they get good wages. When they cannot control their product, they work cheap.

The CHAIRMAN. It is your opinion that if the N. R. A. should cease on June 16 by operation of law, that it would not affect the unemployment situation in America?

Mr. DARROW. If it did, it would help it, I think.

The CHAIRMAN. You think it would help it?

Mr. DARROW. Yes. It would certainly help small business. I say it would; that is my opinion, that it would help small business and that it would diversify a great deal. Of course people have gotten in the habit of living near their work. Smaller things in smaller towns, where people live cheaper, and if you take that and move it to a city, people do not get adjusted to it, quickly anyhow, and all the same ones are not employed, and it is a very unsettling matter, the whole thing. That is what we have been going through ever since.

Senator COSTIGAN. Mr. Darrow, you have had important relations to labor throughout your life?

Mr. DARROW. Yes.

Senator COSTIGAN. What should be done with the collective bargaining feature of the law?

Mr. DARROW. You mean the N. R. A.?

Senator COSTIGAN. Yes.

Mr. DARROW. Well, now, is anything done about it? It is not a question in my mind as to how it reads. I know that they can have it, but there is no statute that I remember that compels employers to hire union labor, is there?

Senator COSTIGAN. Should there be any provision of law which will require the dealing of collective capital with representatives of——

Mr. DARROW (interposing). No.

Senator COSTIGAN (continuing). Of collective labor through those whom employers and workers freely choose to represent them?

Mr. DARROW. I do not think it is possible to make it work. Of course, capital and labor are antagonistic in the nature of things. The more money the capitalist gives to labor, the less they have to themselves, and labor is always poor as compared to capital, and it is an unequal fight. So far, they have gotten along through the strength

of their unions, and I do not imagine there is anything else that can help them. You cannot pass a statute very well that no one could employ anybody but union men. If you did, it would not last long when it got to the courts, I imagine, and I have had some experience there, too. I think labor has on the whole prospered pretty well when you remember what disadvantages the poor always have and how they manage to get their men together and manage to have them stand together, and their fear of employers who do not want business interfered with. Of course, they used to pass a great many more laws against them and enforce them more strictly. I think Mr. Roosevelt has made it easier for them to organize. I think labor has got to depend upon itself, just the same as anybody else has.

Senator COSTIGAN. Did you discover any minimum-wage safeguards in the N. R. A.?

Mr. DARROW. I beg your pardon?

Senator COSTIGAN. Did you discover any minimum-wage safeguards in the operation of the N. R. A.?

Mr. DARROW. There isn't any such thing. The safeguards are on the other side. Let me call your attention to another thing. If you get tired, I wish you would tell me, because I am getting to the garrulous age. I got there a long time ago.

The CHAIRMAN. We are not getting tired.

Mr. DARROW. The whole thing is obviously made for the rich man, "big business." It could not be for anything else. They put no safeguard on it. The safeguard is the other way. They cannot sell cheaper. They can get all that they possibly can out of it, but they must have that much.

Let me tell you who made this thing. I am not going to talk about you, Don [addressing Mr. Richberg]; I might if you were not here. [Laughter.]

Once he was a friend of the poor man. Once, I said. [Laughter.]

Senator COUZENS. That is obvious.

Mr. DARROW. I pretty near got off the track on that subject.

Well, how did this thing come about? The first thing that attracted my attention to it was the wise political economist who advocated killing little pigs because we had too much pork. An economist connected with the administration, and who advocated plowing up crops for fear that people would overeat, although everybody was hungry, and not only advocated it but did it. So they set the horses in the North to plowing down corn, and the farmers in the South got their mules out to plow down cotton. They had trouble with the mules, as I read in the paper; they had been taught not to step on the cotton. [Laughter.]

So there was some wisdom left in the South. [Laughter.]

And then because it looked a little raw, they took a more direct and ladylike way of doing it. They hired farmers not to raise crops. Farmers like to work so much, they have to hire them not to. And so they went around hiring these farmers, and they are doing it now, paying people for not working. I would like a job of that sort myself. [Laughter.]

That is what the farmers have got. I don't know how many others have got it.

If there is a political economist who ever wrote and advocated any such thing, I would like to know his name.

How is that going to help? I know what they thought. They thought all we needed was high prices. I am not interested in high prices; I have not got anything to sell; I buy. I would rather that bacon be much cheaper than it is today. I don't remember how much it was when I stopped eating it, but it is pretty high—40 cents or around there.

It is the greatest piece of absurdity that ever entered the head of a would-be political economist that high prices are a blessing. They knew how high prices came. They knew it came from scarcity. When there is scarcity, prices are high. When there is plenty, prices are low. What do you want—plenty or scarcity? I know I want plenty and nobody wants scarcity unless he has got some fool opinion of what scarcity is going to do for him.

They said that we had overproduction, and we have got to lie still until it caught up. Overproduction is a fool idea that has not prevailed in intellectual circles since Adam Smith, and I have been fairly familiar with most of the economists all the way down the line. I have not read all of them, but I have read a great many of them. There never was such a thing as overproduction and never could be such a thing.

Production comes from desires, and it comes from our imagination and our stomach and some other things. We want things, and until all human wants are satisfied, there can be no overproduction, and that is how it happened, and unless people have got to grow more imbecilic than they are now, so that their wants are easily satisfied, it will continue. It is utterly absurd because the farmer could not sell his corn for what he thought he ought to get out of it, or anybody else sell something that they thought they ought to at a higher price, that we should deliberately raise prices by scarcity—burn pigs and plow under corn and cotton and hire farmers not to raise anything to eat, make us poor and hungry and then we will buy even if we have not got anything to buy with.

That theory is not supported by any political economist whoever wrote. I have not read all of them, but I am familiar with the basis of them, and I do not believe that anybody ever said it.

It is new, invented by the N. R. A. recently, that is in its full glory. Everybody who has got something to sell gets all they can, and everybody who has something to buy wants to get it as cheap as they can. That is the law of life, and I do not think you can get out of it.

Just take the world as it is. Have we got too much? Of what? I will bet that there is not 5 percent or 10 percent of the women that would not like to get another dress. We don't know why, but they do, and they like to get a new hat and probably some shoes and stockings. You cannot tell why even if the old ones are all right. How about your wives? Don't they want something else? I'll bet they do. I know my wife does. [Laughter.]

How about the men? I wonder if we have all got too many clothes. It is pretty near time for me to get some new ones, but I don't go out much. Nobody has got enough. Go out through the country where I came from and where I go to every chance I have to get out, because I love the country, and there is hardly a new farmhouse anywhere in this northern country.

I took a trip of considerable length not long ago near my old country home in Ohio. I traveled a great many miles and I knew pretty nearly every house. I left it 50 years ago, but the house did not. Everyone of them wants a new house. Nobody has got enough. What are people talking about when they talk about deliberately destroying stuff, when there is not anybody living that does not want more than they have got? The trouble is not that we have got too much wealth, the trouble is that it is not distributed anywhere near fairly. We need a new distribution and a mighty radical one which would probably won't come, which we probably won't get, but we have not got enough to distribute. Everybody is poor. It is a poor world, a shabby world all over.

How many people are careful about their clothes? They put their best foot forward. Almost everybody, almost everybody, and yet we destroy food, pay people not to work so we can produce an artificial scarcity and all get rich because we are poor. Not for me. I say that it is inherent in the ideas of N. R. A. that scarcity is a blessing and plenty is a curse. It is a poor political economy.

Senator KING. In your investigation, did you discover that "big business", or the representatives of the larger units were the ones who backed the codes or who promoted the codes and who were enforcing the codes?

Mr. DARROW. Without an exception. They do not even deny it. They say it was put in their hands to fix the price, and they did not care how high the price was. This is built on the idea that we have got to have higher prices. I mentioned the exact position of these people on the question of scarcity. From my friend Richberg down. He was with me for a long time but he got over it. I don't know why. Most everybody has, but I am going to hang to it as long as I live.

Senator COSTIGAN. Mr. Darrow, it has been reported that child labor has been eliminated and that minimum wages in some sweatshops have been increased from 3 or 5 cents an hour to 40 cents an hour.

Mr. DARROW. Increased from what, did you say?

Senator COSTIGAN. From a minimum of 3 or 5 cents an hour to 40 cents an hour.

Mr. DARROW. I would like to know where.

Senator COSTIGAN. What are the facts?

Mr. DARROW. Well now, I do not want to pretend that I know what I don't know. I made no investigation upon that.

Senator COSTIGAN. Did you discover that child labor had been eliminated?

Mr. DARROW. I discovered it 20 years ago. It had not been fully eliminated, but gradually for 20 years we have been growing too wise and too intelligent and too decent to have child labor. It certainly was no great trouble to finish it when most all the full grown men and women were out of a job, and they did not need to work the children.

Senator COSTIGAN. Was it finished under the N. R. A.? Your sympathies are known in that field, and I only want to discover the facts.

Mr. DARROW. Yes. As far as I know, the first legal action was taken, but the work had all been done before, and of course the panic

or whatever we call it—I guess I don't know—maybe it is normal instead of a panic nowadays—but it left no room for child labor. Fathers and mothers were out of a job. Full-grown men were out of a job, as they are today.

Senator CLARK. Mr. Darrow, in your judgment was it necessary not only to legalize but to make mandatory in many cases every sort of monopolistic practice that had been outlawed in this country for nearly half a century, in order to eliminate child labor or authorize the collective bargaining?

Mr. DARROW. No. There are natural forces back of most everything. Human beings don't do half as much as they think they do. Their intellect is not so great. It comes from experience. We learn certain things because we had to learn them or starve and that occurred to us in our business.

Senator KING. Is it not a fact, Mr. Darrow, that many of the States had laws which protected child labor, or rather prevented child labor and were not the States more and more enacting legislation of that character?

Mr. DARROW. Of course it was going out of style fast. When my friend Richberg begins to tell what they have done he says that they have abolished child labor the first thing. I was working on that before he was born. [Laughter.]

Senator COSTIGAN. As a matter of fact statistics, even during the period preceding the depression, which began in 1929, indicated that two or more million children were working more or less excessively in this country, while adults were out of work. One of the grievances of unemployed men and women in those days was that it was impossible to substitute adult for child labor. Have you any facts with reference to child labor employment prior to 1929?

Mr. DARROW. 1929 meaning what time?

Senator COSTIGAN. The Wall Street collapse in October 1929.

Mr. DARROW. Prior to that?

Senator COSTIGAN. Prior to that, and since.

Mr. DARROW. No, I could give you what I think was the logic of it. Of course, good times have gone forever. We have had in the past a sort of a changing cycle of fever and ague, one following the other—sometimes hot and sometimes cold. Sometimes we can get a full stomach and sometimes we get along with an empty stomach. That is, the people that work. I do not work, so I always have enough. But in the future, more than in the past—panics and good times—all of these things are going to follow each other. Why? Because the power of production has overrun any machinery we have, or any idea we have for distribution. It is no trouble to produce goods now. I would not pretend to quote figures, but we can produce 20 times as much at least, to be moderate, as we could 50 years ago. In the next 10 years, if we get into business again, we can produce so many more goods than we have that we can get a panic quicker. It is easy to produce, but who is consuming? Nobody but the well-to-do. It is a travesty upon the intelligence of people, I think, that there should be any such outrageous distribution of the products of toil as there is at this time, and as there always has been in the world. This time is not different from any other. I have always been interested in it, because I was interested in the question.

Senator COSTIGAN. Your analysis indicates that in your judgment "big business" is consuming the consumer?

Mr. DARROW. Yes. I don't know what "big business" is going to do without the consumer. They have to eat more themselves. Their stomachs are not much bigger than ours; of course they are a little bigger—they have been distended more. Not much.

The CHAIRMAN. Are there any other questions?

Senator LONERGAN. I would like to ask a question of Mr. Darrow, Mr. Chairman.

The CHAIRMAN. Yes; Senator Lonergan.

Senator LONERGAN. As a lawyer, do you feel that Congress has any power to legislate on matters solely within a State?

Mr. DARROW. Well, I will give you my opinion, which I have not verified lately. I would say they had not.

Senator LONERGAN. I think you are right.

Mr. DARROW. I do not know what the Federal and State division stands for unless it is for something like that. Don, am I right about that? [Addressing Mr. Richberg.]

[Laughter.]

Mr. RICHBERG. Partly right.

Mr. DARROW. Neither of us ought to be glad if we are partly right.

Senator LONERGAN. I was interested in your statement about curtailed production. Do you feel the same way about production insofar as industry is concerned?

Mr. DARROW. Whether we should shorten hours and so on?

Senator LONERGAN. Yes.

Mr. DARROW. I think we should.

Senator LONERGAN. What is your idea?

Mr. DARROW. Because we do not need it to start with.

Senator LONERGAN. No, I mean as to the number of hours per week.

Mr. DARROW. I have not carefully thought of that. How many are they now?

Senator LONERGAN. Well, it varies—48 or 50 or 54.

Mr. RICHBERG. It is an average between 40 and 48.

Senator BLACK. That does not mean that they have actually been working between 40 and 48.

Senator LONERGAN. I would like to have an answer.

Mr. DARROW. I know there is a lot of idleness that we all have to recognize. Why, I would say—of course it is pretty easy to make them as short as we please, but they ought not to be more than 5 or 6 hours a day.

Senator LONERGAN. For how many days?

Mr. DARROW. Five. What do the men do anyway? The men do not do anything, the machine does it all.

Senator LONERGAN. Have you any ideas for improving the system of distribution? We all agree we have underconsumption.

Mr. DARROW. Improving the distribution?

Senator LONERGAN. Of the output of industry and farms.

Mr. DARROW. Whether it should actually be done?

Senator LONERGAN. No; the fault is in our system of distribution. Have you any ideas for improving the system of distribution as to the output of factory and farm?

Mr. DARROW. Yes; I have got a lot of them, but nobody listens to them. [Laughter.]

Senator LONERGAN. I will furnish willing ears.

Mr. DARROW. All right. Of course, it is the crime of the ages, the inequalities of distribution. It is the crime of the ages since man went down into the mines for a shilling a day or 2 shillings, in England, and little children went down with them, 5 or 6 years old. They went down so early they never knew anything about sunlight, worked in the mines all day, and went to bed at night. Perhaps they have gradually raised the conditions to some extent, but you have got to have a will to do before you can do, haven't you?

The lords of creation think that the Almighty meant that they should be rich and the great mass of the people should be poor. Men have got to do these things themselves, but men are awfully hard-hearted. I have even known poor men that were pretty tough. Kindliness comes from imagination, and very few people have any to waste. What they do have, they do not generally use very much. When they get so that they can put themselves in other people's place and suffer because they suffer, we will probably get rid of most of these inequalities, but whether they will ever get there, I do not know.

I think that something like a socialistic system would be the only thing that would make anything like an equal distribution of wealth. There might be a thousand other things that I have never thought of, or a dozen other things, but if the theory would work, which I don't know anything about—it has never been tried, and somehow theories have a habit of looking good and not working out well—but there is no decency or sense in the great difference between the rewards in this world. Some men get say a thousand dollars a day or a hundred dollars a day. I have even had that myself [laughter]—I mean the hundred dollars [laughter]—and others were on the verge of starvation. One man can eat just as much as the other, he needs just as much, and the tragedy and the comedy of all of it is that it is not necessary that anybody should be deprived of anything. What are all of these machines made for if they are not made to help the human race to live a better life, and an easier life, to easier life, to have more pleasure and less pain? They have had their share of pain.

You asked for ultimate things. Undoubtedly things will come in between this time and that time if that time ever comes, and lowering the hours would help. There is no need of working long hours any more. It would be an immense help and it would be a help toward some day when people will be ashamed to be rich, and that is the cultivation of imagination which it is not a very easy thing to do, but there are still some idealists in the world and always have been some. You have got to depend pretty much on those things. I think it is possible that we will have a better situtation a few hundred years from now. I hate to wait so long.

Senator LONERGAN. Do you think there is any substitute for economic laws?

Mr. DARROW. I am not at all sure about economic laws. I do not think they are like the laws of gravity. I think we will find that most of them have been made by human beings and pretty human at that.

Senator LONERGAN. But with thousands of elements entering into the operation of them.

Mr. DARROW. Oh, yes, certainly.

Senator LONERGAN. And world-wide in character.

Mr. DARROW. I would say that the best theory to get would be that of some of the old philosophers, William Morris among the rest, "to everybody according to his needs, and from everybody according to his capacity."

I don't know why a man can't have more pleasure feeding somebody else than eating too much himself. Of course, we would not have any such rotten system if people would be idealistic.

Senator BLACK. I want to ask you a question. As I understand it, the Senator asked you what method could be used to bring about a better distribution under our present system.

Mr. DARROW. Under our present system?

Senator BLACK. As I understood your ideas, I want to see if I am correct; you believe that since we must depend upon the American people mainly to buy our goods, the millions of them, that the only way to enable them to buy the goods is to give them enough income to do so?

Mr. DARROW. Yes.

Senator BLACK. These poor people that you are talking about?

Mr. DARROW. Yes.

Senator BLACK. Do you know anything in the world that will make a factory run and produce except customers who can buy their goods at a profit under our system?

Mr. DARROW. Of course, there isn't any.

Senator BLACK. Then the remedy, so far as distribution is concerned, is for us to find some way to give these millions of people who have to have a living income under a living standard, an income sufficient to enable them to buy the goods of the farm and factory, isn't it?

Mr. DARROW. Certainly. I do not agree with you on the question of our having to consume them all ourselves. I am a free trader.

Senator BLACK. I agree with you, in theory, myself. I have voted against all of these tariff bills, but it seems that nationalism has come to stay for a long time.

Mr. DARROW. We have had too much of it. If the thing is true in theory, it is true in practice. There would be something wrong with your theory if it would not work out.

Senator BLACK. If the people adopt the other practice, not only this country but all of the other countries, and put up embargoes and establish quotas and prohibitions, then you are up against a reality.

Mr. DARROW. I think the United States could exist perfectly well without any other country, but I do not believe in it.

Senator BLACK. Neither do I. I believe in trading. I believe trade is a blessing and not a curse.

Mr. DARROW. Not only that, but trade is the father and mother of good will and of intelligence and learning. Trade is not only the exchange of goods, but it is the exchange of ideas, which is just as important, or almost as important.

Senator BLACK. As I understood your ideas—I just wanted to be sure that your idea was to give everybody a job, with such hours as necessary to give them a job, and give them enough wages to enable them to buy the products of their own labor?

Mr. DARROW. Certainly.

Senator BARKLEY. Mr. Darrow, I was called out and perhaps somebody else asked you this question——

Mr. DARROW (interrupting). I hope I will answer it the same way if they did.

Senator BARKLEY. I have no doubt of that. In speaking of the reports by your Board, the three reports, which I have read in most part—I had to read one of them hastily—but in those reports you set out certain findings that you had brought about by reason of the hearings and the complaints which had been brought to the attention of your board, and you made certain recommendations?

Mr. DARROW. Yes.

Senator BARKLEY. That would correct what you decided were injustices in the administration of the codes if I recall. Do you know to what extent any of your recommendations for corrections were carried out or have been carried out since the Board ceased to exist?

Mr. DARROW. I have not heard of any of them being carried out, but Mr. Mason, who was our counsel, and who is really more familiar with that, says they were carried out to a considerable extent. A good deal of it.

Senator BARKLEY. The duty of this committee is not only to investigate the past operations of N. R. A., but to consider in what form the N. R. A. will be continued, if at all, under the request and suggestion of the President, and it is the recommendation of the administrators, including Mr. Richberg and Mr. Williams who have been testifying for several days, the operations of the N. R. A. in the future be limited to interstate business or such business as materially affects interstate business, and that the number of codes be reduced from some 600 to about one hundred and eighty odd, dealing with the typical larger units of business and industry in the country. Would you say that that to some extent at least, eliminated the objections and criticisms which you found as a result of your investigation?

Mr. DARROW. I think the fewer the better, but I would reduce them more. To nothing. I may be wrong about that, of course. I do not believe in the theory.

Senator BARKLEY. You are opposed to the whole theory of the N. R. A.?

Mr. DARROW. Yes; I do not think it is the right theory. It is based on the idea that there is not enough to go around, and you cannot get enough anyhow, and producing scarcity and all of that. I have no prejudice about that, though.

Senator BARKLEY. Do you think that the elimination of child labor in these codes has been beneficial?

Mr. DARROW. The elimination of child labor is certainly a benefit to anybody who is a human being, whether it comes through the codes or in any other way. Of course, the elimination of child labor has been going on for 200 years now.

Senator BARKLEY. It has been a very gradual elimination?

Mr. DARROW. Yes, too gradual.

Senator BARKLEY. But there was a precipitation of the elimination, was there not, as a result of the codes?

Mr. DARROW. I don't know. I hate to give them any credit. [Laughter.]

Senator BARKLEY. That may furnish a key to your whole attitude toward this thing.

Mr. DARROW. Possibly. But I have talked about a good many things besides that.

Senator BARKLEY. If it be true, and I am not making the assertion, but if it be true that the codes have resulted in the considerable elimination of child labor, you would be willing at least, notwithstanding any preconceived notions, to give credit for that?

Mr. DARROW. Yes; I would lay off of that.

Senator BARKLEY. And if it be true, and I am not making the assertion——

Mr. DARROW (interrupting). I understand.

Senator BARKLEY. But if it be true that the shortening of hours, brought about by the codes, did spread employment among a large number of people, you would be willing to credit that up on the proper side of the ledger?

Mr. DARROW. Yes. Browning, I believe, said there is good in everything. That I believe ought to apply to N. R. A.

Senator BARKLEY. That is all.

The CHAIRMAN. Thank you very much, Mr. Darrow, for your testimony.

We will now hear from Mr. Hillman.

STATEMENT BY SIDNEY HILLMAN

Mr. HILLMAN. Mr. Chairman and gentlemen of the committee, for the record, my name is Sidney Hillman, president of the Amalgamated Clothing Workers of America, member of the Labor Advisory Board since the organization of the N. R. A., and a member of the National Industrial Recovery Board since last September.

I did not expect to have the opportunity to appear this morning, and therefore have not the material with me to substantiate my statements, but I would be very glad to state, in the limited time, my reaction to, first, the conditions prevailing before the N. R. A. became a law of the land, and the result of our experience, especially affecting labor, since the National Industrial Recovery Act became the law of the land.

I am quite fearful that most people do forget the condition prevailing in the country 2 years ago. In my contact with labor, we found that by 1931 and 1932 and the early part of 1933, conditions had become unbearable as far as labor is concerned.

I do not like to take issue with my good friend Mr. Darrow, but from personal experience I know that in the years after 1929, child labor became a larger and larger factor in American industry. I can present evidence to show that parents have been put out of work and children 14 and 15 years old were put in the factories at wages of $2 and $1 a week. The family had to depend on the support of child labor, not merely in some few instances, but affecting tens of thousands of workers.

In my contact mainly with what is called the "sweated" industries, we found that since 1929, wages went down as low as 2 and 3 cents an hour, not merely of some individuals, but affecting thousands of workers.

Considering production first; even before the N. R. A. provisions which are alleged to have curtailed production, it had been reduced 50 percent in this country from 1929 until 1933——

Senator BLACK (interrupting). Pardon me. I did not want to interrupt you, but will you repeat that?

Mr. HILLMAN. Production compared in 1932 and 1933 to 1929 went down 50 percent.

Senator BLACK. You said something about before the N. R. A. curtailed production.

Mr. HILLMAN. I say, I have made reference that this could not be harged up to the provision for curtailment of production that N. R. A. is today being charged with. At that time there was the freedom for employers to produce as much as possible.

Senator BLACK. Isn't there yet?

Mr. HILLMAN. It has been stated by a number of critics of N. R. A. and including my friend Mr. Darrow, that the N. R. A. is built on an economy of scarcity to control production so that we can raise price levels, and I say the fact is, without going into any defense of whatever unfair or fair trade practices are written into many of the codes, it is a matter of record that from 1929 until 1933, production, the volume of production in this country, was reduced close to 50 percent.

Senator BLACK. You still did not answer my question. Do I understand from what you say that there are provisions in the codes providing for curtailment of production?

Mr. HILLMAN. What I mean by it, Senator, is that, regardless of provisions in codes, production will be curtailed naturally if there is no power for consumption.

Senator BLACK. All I was interested in is this: You say the codes themselves provide for a curtailment of production in the factories.

Mr. HILLMAN. I am sorry I brought that in. [Laughter.]

Senator, what I am trying to make clear is this——

Senator BLACK (interrupting). Do they or do they not?

Mr. HILLMAN. I believe that some of them, if put in on a long-range program and if carried in the codes, may curtail production.

Senator BLACK. You can bring those provisions tomorrow; can you not?

Mr. HILLMAN. Of course.

Senator BLACK. All right.

Senator KING. When you speak of the reduction in production, do you mean farmers as well?

Mr. HILLMAN. I am taking industrial production.

Senator King. What about farmers?

Mr. HILLMAN. The farmers had overproduced, and therefore had no purchasing power left at all.

Senator KING. Do you not know that there was a limitation of production in cotton and in many of the farm commodities?

Mr. HILLMAN. I am referring to conditions before the "new deal" policies went into effect.

Senator KING. I am referring to the years that you referred to. Was there not a reduction in agricultural production and cattle and mining activities?

Mr. HILLMAN. Mining activities, yes; but I understand that the farmers needed the provision for the curtailment of production that went into effect.

Senator KING. I am not asking you who needed it; I am asking you if it was not a fact. Is it a fact?

Mr. HILLMAN. That there was an overproduction at that time? Yes.

Senator KING. Is it not a fact that there was a reduction in production?

Mr. HILLMAN. Possibly. I am not as familiar with that.

Senator KING. Are you limiting your generalization to the textile trade, or are you speaking generally?

Mr. HILLMAN. I am speaking of the general production of the manufacturing industries.

Up until 1933, unemployment, as is well known, had increased at a pace that was most alarming. The official figures are that there were 13½ millions of people unemployed.

Senator KING. When was that?

Mr. HILLMAN. In 1933, the early part of 1933. Estimates were that there were from 15 to 17 million unemployed and, as a matter of fact, in the early part of 1933 a larger number of people were losing their jobs than at any time before. Over half a million people were being discharged monthly from industry at that time.

As far as wages are concerned, the total wage bill has been cut down 60 percent. A worker receiving a dollar in 1929, received as little as 40 cents in 1933. The wage bill had gone down over 60 percent, and of course it is obvious what the effects of that were on the consumption power of the country, and it is my conviction, and my firm conviction, that if the "new deal" policies would not have been initiated at that time, that we were drifting very rapidly to a complete stagnation of industry. We could figure out at what time, almost, our whole employed population would be unemployed.

The sentiment among the laboring groups at that time was a complete feeling of hopelessness. They had lost confidence completely in the leadership of the country—its financial leadership, industrial leadership and also political leadership, and I just hate to think of what would have happened if the new administration had not come in with the "new deal" policies that have again given hope to all of these millions of people.

Since the N. I. R. A. has become a law—and I am not here to say that the National Industrial Recovery Act has carried out what I believe ought to have been its natural development—I believe that we have not gone far enough in N. R. A. We should shorten the working hours more rapidly and much more radically than we have done, but it is a matter of record that since 1933, over 3½ million workers have been placed back in industry.

These are facts and not theories. We do not have to question whether it did or did not happen. It is a fact that 3½ million workers have been placed back, many of whom had lost any hope of ever finding jobs in industry, before the "new deal" policies came into effect.

In my judgment, minimum wages are too low—entirely too low—but we can show tens of thousands and hundreds of thousands of workers who were compelled to accept wages as low as 10 cents an hour, 5 cents an hour, 3 cents an hour, who have at least the protection of 24 cents an hour, 30 cents an hour, and 40 cents an hour. It is a fact that for these workers for the first time since 1933, and some of them even before 1929, it is the first time they are getting Government protection to guarantee them a very low minimum income, but at least guarantee them a minimum income.

And I am in total disagreement with Mr. Darrow's statement, and the facts are on my side, that we could give protection to workers to save them from a starvation wage without a law. It is my firm conviction that if the National Industrial Recovery Act is not renewed, and of course in my judgment it ought to be a stronger act and not a weaker act or no act at all, that this country is going to face an unemployment situation even worse than in 1932 and 1933. These employers who were compelled by law to reemploy people will make up for lost time. We had conditions in 1932 and 1933 with 15,000,000 people unemployed, and children were compelled to work 50 hours a week and as much as 60 and 70 hours a week, and the people who were unemployed had to get support from relief agencies and Government relief. There are already very disturbing indications since the criticism that has goine out against N. R. A., and I would like to say to you gentlemen that I believe some of the criticism is well justified, but it is one thing to say that something that we have undertaken in less than 2 years, in the time of the greatest emergency, with all of the pressure from the people from all sides, with a very weak law in my judgment, a law that has compelled us to say to employers "What will you do?" is not perfect and another to condemn it entirely.

While there is a clause for the imposition of codes, but whether the law was not considered strong enough or whether it was not considered proper policy, there has not been a single imposed code. When I say "we"—I was not in the administration, I was representing one of the so-called "pressure" groups, the labor group. We would come over and we would say, as for instance regarding the laundry trade: "All we could do is to bring them up to 14 cents an hour." A very low wage, but at 14 cents an hour, that meant an increase of 46 percent on the prevailing wage at that time, and of course not having the power to impose codes or not being the line of policy, we had to take 14 cents an hour in the laundries, where at least we knew that we will give some relief and help to those sweated and starved workers, and not merely hold out to them very beautiful panaceas in the future. In other words, giving them some opium while the sweat operators were operating on them.

Senator BLACK. Mr. Hillman, would you object if I asked you a question?

Mr. HILLMAN. No; certainly not.

Senator BLACK. You say if all of this were not changed, you thought many people would be thrown out of employment?

Mr. HILLMAN. By millions they will be thrown out.

Senator BLACK. What features of this law do you refer to as giving them employment?

Mr. HILLMAN. Maximum hours.

Senator BLACK. Anything else?

Mr. HILLMAN. Minimum wages.

Senator BLACK. Anything else?

Mr. HILLMAN. Of course, child labor.

Senator BLACK. Anything else?

Mr. HILLMAN. The next thing I am coming to is where I am to speak for the other pressure group. I am trying to get something else——

Senator BLACK (interrupting). What other features are necessary to prevent throwing these millions out of work?

Mr. HILLMAN. I believe it is necessary, Senator, and there, of course, we have to be very critical and very careful to see that what is done is done only where it is necessary. There are certain industries that are sick industries. Those sick industries, if they need relief, ought to be given relief, otherwise, of course, they will not provide reemployment.

Senator BLACK. Which ones do you refer to?

Mr. HILLMAN. Well, we will take the bituminous coal industry, an industry that is overdeveloped, and a number of other factors that affect that particular industry. That industry has been a bankrupt industry——

Senator BLACK (interrupting). What is the relief that they need?

Mr. HILLMAN. We may have to go so far as to give them a measure of price control.

Senator BLACK. All right. Then you have four things in mind, as I understand—maximum hours, minimum wages, child labor, and price-fixing.

Mr. HILLMAN. No; not price-fixing. If you will permit me to develop——

Senator BLACK (interrupting). Price control.

Mr. HILLMAN. If you will permit me to develop it, I was coming to that.

Senator BLACK. You said "price control", did you not?

Mr. HILLMAN. I say that in some industries—in my judgment very few—I could not name three of them——

Senator BLACK (interrupting). I am not interested in how many. That is the fourth thing. Is there anything else?

Mr. HILLMAN. In the case of the textile industry, which is overdeveloped, you may need to give them production control.

Senator BLACK. That is five. In other words, you mean by that, the power to reduce production?

Mr. HILLMAN. Temporarily.

Senator BLACK. Or fail to produce, by agreement with each other?

Mr. HILLMAN. It is not a question of the curtailment of production. Production is being curtailed by what people call natural causes——

Senator BLACK (interrupting): I am not talking about the other method; I am talking about the fifth thing you suggested.

Mr. HILLMAN. It is to bring about orderly production.

Senator BLACK. To give them the right by agreement to fix the amount that is produced in the industry.

Mr. HILLMAN. I would say that that is not the purpose, but I would not give them the right.

Senator BLACK. You would have that supervised?

Mr. HILLMAN. No; I would not have it even supervised. I would say that if an industry is so sick, that they must have that kind of relief, a governmental agency alone should have the only power, not merely to determine, but even to investigate. Then we will say, Government approval, of course. We must take the information submitted by the industry.

Senator BLACK. That is the fifth. Is there anything else that has to be continued, according to your judgment, to keep people from being put out of employment?

Mr. HILLMAN. No; I do not know of anything else. I would say on this question—you probably heard that whisper—there are certain unfair trade practices.

Senator BLACK. Who suggested that?

Mr. RICHBERG. I suggested that.

Senator BLACK. All right. You suggest that certain unfair trade practices that we have got to protect against, to keep people from being thrown out of work?

Mr. HILLMAN. Yes.

Senator BLACK. That is what we are talking about.

Mr. HILLMAN. A sick industry utlimately means less employment.

Senator BLACK. Now we have got those five.

Mr. HILLMAN. Yes.

Senator BLACK. Which trade practices?

Mr. HILLMAN. I would say to throw out 95 percent that industry suggests, and you will still find 5 percent——

Senator BLACK (interrupting). Which trade practice is it now that needs to be protected?

Mr. HILLMAN. There is no question that we will all agree that fraudulent advertising should be outlawed.

Senator BLACK. That is done by law ordinarily, is it not? That is fraud. Do you not think that ordinarily if Congress is going to outlaw fraud and stealing, that it ought to do that by a law?

Mr. HILLMAN. Yes; you are right.

Senator BLACK. That could be done by a law, could it not?

Mr. HILLMAN. Senator, we have the antitrust laws that have been laws for decades, and still we find that trusts have grown bigger and fatter for all of these years. Our experience is that unless we can, unless the Government will create an administrative agency to move positively in not permitting that sort of trustification that comes from the mere use and abuse of the power, I have not, Senator, much confidence in just passing a law. The antitrust law is there, and we have the aluminum trust——

Senator BLACK (interrupting). We could enforce it, if Congress passed it, as well as if the N. R. A. passed it. Do you think there is any difference in enforcing a law that Congress passes or one that the N. R. A. passes?

Mr. HILLMAN. I believe that any law must be passed by Congress, but I believe that unless Congress brings about an administrative agency, whether it is the N. R. A. or what not, that can actually follow up and give protection to the small unit against that power uncontrolled, by the large unit, that the law itself will give very little protection to the small business man.

Senator BLACK. What is the next thing that you think we have got to protect against to keep people from being thrown out of work?

Mr. HILLMAN. I think that these matters which I have mentioned will give proper protection. Further, I would like to have in the law affecting labor provisions, a definite—not merely power given to the President—but direction and instruction if you please to the President, that any industry may submit voluntarily if possible a code of fair labor provisions, a limited code, and if they do not, that such a code be imposed upon them, because Senator, what we find is this——

Senator BLACK (interrupting). You give that as the sixth thing that we have to do?

Mr. HILLMAN. That we must have outstanding, otherwise, we are in a position where we have to do horse trading with industry, whether it is a single administrator, a board, or anyone.

Senator BLACK. Do you know anybody who ever got by successfully in horse trading with industry?

Mr. HILLMAN. If we are going into a position of horse trading, I believe they have much more trading experience.

Senator BLACK. Do you know anybody who ever made a good trade with them?

Mr. HILLMAN. Unless you have power to match them, and I would say that in the law there should be a definite provision for imposition of codes, that whatever is the agency, whether it is Congress itself, whether it is the N. R. A., whether it is any other agency, that in our anxiety to give protection to labor and bring about reemployment, we have to sanction a number of other things that industry believes they must have, and we ought to make the law so definite that an employer, a large industry, will not come around and say, "Unless you give us this, we will not agree to the code." We have some industries today that do not have any code.

Senator BLACK. Let me ask you this other question: What part, in your judgment, from your experience down there, of these three and a half million people who have been reemployed, have been reemployed on account of the maximum hours and minimum wages and child labor, and what part have been reemployed on account of the stabilizing or fixing of price control of any kind, and these other unfair trade practices? You have some judgment on that?

Mr. HILLMAN. I would give the least to price control. I would say the bulk of reemployment came through the minimum wage, which gave us more purchasing power, and the maximum hours, which provided for reemployment.

Senator BLACK. What part of it would you say came from them?

Mr. HILLMAN. Of course, it is such a wild guess. In my own judgment, I would say 80 percent.

Senator BLACK. Do you believe that as many as one-tenth of 1 percent were reemployed on account of the stabilizing of prices in the aggregate?

Mr. HILLMAN. I would not want to say to you of my own knowledge what effect it has. My approach to that, Senator——

Senator BLACK (interrupting). Do you believe any part of it was brought about by that provision? The reemployment.

Mr. HILLMAN. I would say this, Senator. Not reemployment through price-fixing, but assuming that we should, for instance, in the bituminous coal——

Senator BLACK (interrupting). Do you believe any part of it was brought about by that, or not?

Mr. HILLMAN. I would say that the bituminous coal industry could not maintain its reemployment program and its wage levels if they would have the cutthroat competition that has been ruining that industry for the last 20 years.

Senator BLACK. Do you believe any part of the reemployment of the 3½ millions was brought about by stabilization of prices?

Mr. HILLMAN. Some, yes. I would say that the coal industry, not only the question of reemployment, but the people that were employed were employed at starvation wages. I would say that the major part in the bituminous coal, affecting 300,000 to 400,000 workers can have their reemployment at a decent minimum wage because of the price protection.

Senator BLACK. If this Congress should pass laws relating to wages, that you are talking about, and relating to hours and conditions of labor, you know, do you not, Mr. Hillman, that we would take care of the overwhelming percentage of elements which enter into employment or unemployment?

Mr. HILLMAN. I agree fully with you, Senator.

The CHAIRMAN. The committee will recess until 10 o'clock tomorrow morning, and Mr. Hillman, you will please be here then.

(Whereupon, at 12 o'clock noon, a recess was taken until Thursday, Mar. 21, 1935, at 10 a. m.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

THURSDAY, MARCH 21, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), King, Walsh, Barkley, Costigan, Clark, Black, Gerry, Keyes, La Follette, and Hastings.

The CHAIRMAN. The committee will be in order. Mr. Hillman, you may proceed where you left off yesterday.

STATEMENT OF SIDNEY HILLMAN—Resumed

Mr. HILLMAN. Mr. Chairman and members of the committee, I want to substantiate some of the statements which I made yesterday with those facts which are a matter of record. I am going into those facts just briefly.

I have here from the files, which are full of all the records we have, whether from the Federal Reserve Board, the N. R. A., the Bureau of Labor Statistics, affecting production, wages, hours, and conditions of employment before the N. R. A. had gone into effect.

Production in 1932 and 1933——

Senator KING (interrupting). You do not go back to 1927 and 1928; do you?

Mr. HILLMAN. I may come back to that after a while.

Senator KING. I do not know the pertinency, but I just wondered if you did.

Mr. HILLMAN. I am taking 1929 as 100 percent—taking the year that was the high of our prosperity. Production went down to 48.7 percent December 1932; March 1933, 48.710; December 1934, 63.9.

Senator KING. You do not claim that that was because we did not have the codes, do you?

Mr. HILLMAN. I claim that it was because we had no national policy giving any protection to labor and industry. There was an increase of 31 percent; pay rolls compared with 1929, of 38 percent. March 1933 it went down to 33.9 percent; in other words, the spiral, keeping on with reduction of wages, went down at a tremendous pace.

During the period of N. R. A., 1934, pay rolls had gone up to 57.9 percent, an increase of 68 percent compared with the pre-code period.

I do not believe that anyone can just explain that away by natural causes, when, as a matter of fact, we know the natural causes, so-called, the economic laws have worked in a way where, from month to month, hundreds of thousands of people were added to the list of unemployed, and wages kept going down and down all the time.

As I have said yesterday, our production in this country has gone down from 1929 to 1933 over 50 percent, compared with Great Britain, where the downward curtailment of production was only 15 percent; and the only logical explanation for that is in my judgment, because Great Britain has given protection to labor, which means to purchasing power. Great Britain has recognized collective bargaining as a national policy. Great Britain has recognized minimum wages.

Great Britain was wise enough in decades back to provide unemployment insurance, so that there would not be thrown in the streets and in the bread lines all of these people and completely destroy them as possible consumers of the things we do produce; and therefore, when people say that they are not doing things in Great Britain, and they are not worse off—and I am not here to pass judgment which country is worse off—I would say that the unregulated way of running things in this country up until the "new deal" policies went into effect have almost destroyed the whole economic structure of the country.

Now let us see just about the high spots in the question how low the wages came down. Let me first ask, when 15 million people were unemployed, what were the hours of work? In the wholesale trade, in some instances, employees worked 60, 70, and more hours of work per week.

In the crushed-stone and gravel industry, the minimum in the rural areas was 10 cents an hour, and the maximum hours were 10 per day before the code.

Senator HASTINGS. Where was that 10 cents a day——

Mr. HILLMAN (interrupting). I said 10 cents an hour.

Senator HASTINGS. Where was that?

Mr. HILLMAN. In the crushed stone and gravel.

Senator HASTINGS. At what particular place?

Mr. HILLMAN. I am just taking the information given to me by the Research and Planning Division, and, of course, I am not in a position to give just the place, but we can supply the information to the committee at what places those wages have prevailed.

Senator HASTINGS. Do you mean that that was the prevailing wage?

Mr. HILLMAN. No; I said it went down as low as that.

In the paper and pulp industry——

Senator KING (interrupting). You know that in some industries during the depression they almost ceased to function, do you not?

Mr. HILLMAN. That is exactly, Senator, what I want to bring out.

Senator KING (interrupting). And 10 or 12 million men were out of employment?

Mr. HILLMAN. That is exactly, Senator, what I would like to bring to this committee—that we were on a downward spiral, so that people were working as low as $1 and $2 a week, and, of course, adding, because of that, to the great army of unemployed.

The farm-equipment industry—common labor was paid about 12½ to 20 cents per hour in 1933.

In the pecan-shelling industry, the average weekly earnings for girls was $3.50 per week in 1933.

In the sanitary and waterproof specialties industries, early in 1933 the minimum rates were paid from 11 to 25 cents per hour.

The salt industry, 60 to 70 hours per week prevailed before the code.

In the construction industry, the pre-code minimum wage rates were 10 cents in the South, 12½ cents in the central part of the country, and 20 cents in the North.

And so also, in the clothing industry—that I am very, very well familiar with—wages had gone down in an industry that has enjoyed an average wage in the major parts of the clothing industry of $1 an hour—it went down to as low as 5 cents an hour, 3 cents an hour, and 10 cents an hour.

Let us see what the consequences of that——

Senator HASTINGS. You organized the Amalgamated Clothing Workers?

Mr. HILLMAN. I have been the president of the Amalgamated Clothing Workers, and I am——

Senator KING. And that has been in existence for some time?

Mr. HILLMAN. It has been in existence for 20 years.

Senator KING. I have here a copy of your preamble and bylaws, and I find it is. [Reading:]

The industrial and inter-industrial organization, built upon the solid rock of organization and class consciousness, will put the actual working class in actual control of the system of production and the working class will then be ready to take possession of it.

That is part of your creed?

Mr. HILLMAN. That preamble has been out of our constitution for probably over 10 or 15 years, and it was at a time, Senator——

Senator KING (interrupting). You put that into your constitution——

Mr. HILLMAN (interrupting). It was at a time, Senator, when a number of our people were impressed with the beautiful constructive thoughts of Mr. Darrow, and who still believe, you know, in some wonderful panaceas in the future.

Senator KING. You put that in your program after you had come from Russia, did you not?

Mr. HILLMAN. I had been here for quite a while before that, Senator.

Senator KING. You can answer the question yes or no, can you not? That was put into your plan here after you had come from Russia?

Mr. HILLMAN. Of course, I come from Russia——

Senator KING (interrupting). No. That was put into your organization here after you had come from Russia? Please answer that.

Mr. HILLMAN. Of course it was. I was born in Russia.

Senator WALSH. The witness should answer the questions.

Senator KING. I think he should, but he wants to insist upon making a speech every time.

Mr. HILLMAN. No; I am just trying——

Senator BLACK (interrupting). When did you come? How long have you been in this country?

Mr. HILLMAN. I left Russia in 1906.

Senator BLACK. When were you born?
Mr. HILLMAN. In 1887.
Senator BLACK. Are you naturalized?
Mr. HILLMAN. Oh, yes.
Senator BLACK. How long have you been in this country; a voting citizen?
Mr. HILLMAN. Over 20 years. About 20 years.
Senator KING. You have been back to Russia a number of times, have you not?
Mr. HILLMAN. Yes. I have visited Russia three times since the war.
Senator KING. And you have here an organization, have you not, an organization which is a sort of a clearing house, which deals with Russia?
Mr. HILLMAN. Our banks have had a transmission service to Russia for sending money, so that it should be paid in American dollars and not in worthless rubles. The Mellon bank and other banks have availed themselves of our service.
Senator WALSH. Are you not the witness who appeared last year before the Committee on Education and Labor in opposition to the Wagner labor bill?
Mr. HILLMAN. No, Senator. I appeared for the Wagner labor bill.
Senator WALSH. You appeared for it?
Mr. HILLMAN. Yes, Senator. You were presiding over that hearing.
Senator WALSH. Are you in harmony with the views of the American Federation of Labor?
Mr. HILLMAN. I am part of the American Federation of Labor.
Senator KING. For 1 year?
Mr. HILLMAN. Just for 1 year.
Senator KING. They would not let you in with some of your radical views of bolshevistic views, and you——
Mr. HILLMAN (interrupting). Senator, I should rather prefer that President Green and John Lewis speak on this matter.
Senator KING. All right. Proceed.
Mr. HILLMAN. On the question of the condition prevailing before 1932 and 1933, the purchasing power of the country had been reduced to a degree where, in my judgment, there was nothing else but to look forward to a complete paralysis of our industries.
I appeared before a Senate committee presided over by Senator La Follette in 1930, when the number of people unemployed in this country was only four to five million, and we had at that time urged along with others that real protection be given to labor in the emergency, and I am satisfied that if a policy would have been carried out at that time where labor would have been given sufficient guarantees for minimum wages and maximum hours, that we would have avoided the worst time of the depression.
The record since N. R. A., is a record of reemployment, reemployment running up into millions and that has been accomplished through the shortening of hours and the provision for proper minimum wages.
I have a telegram that I would like to read right now, showing what has been accomplished in one industry, in the cotton-garment industry, by just the introduction of the 36-hour week, in the last 3 months.

Senator KING. Do you know that there are more than 100 mills closed in Georgia and South Carolina during the last 2 or 3 months?

Mr. HILLMAN. In the cotton-garment industry?

Senator KING. Cotton cloth.

Mr. HILLMAN. I am referring right now to cotton garments. Here is the statement from the Cotton Garment Code Authority, a telegram to Burton Oppenheim, Apparel Section, Division 5. [Reading:]

Preliminary tabulation of companies covering three-quarters of total employment reports 147,000 workers February 1935, an increase of 11 percent for identical plants above February 1934.

The introduction of the 36-hour week in the cotton-garment industry has added within the last 2 months, close to 20,000 workers in that industry. Twenty thousand workers have been taken off the relief rolls or will not have to go on the relief rolls by the instrument that we have today, through hearings, conferences, and determinations in N. R. A.

This is an industry that was known as the "sweatshop industry", where child labor was employed in larger and larger numbers. Wages went down to $1 and $2. $4, $5, or $6 was the median wage, or the average wage in the State of Pennsylvania.

Here is the report to the N. R. A. [Reading:]

Based on reports covering three-fourths of employees in the industry for 1 week in the month, Dr. Alfred Kahn, statistician, estimates 1934 the total February pay roll $7,600,000. 1935 total February pay roll $10,200,000. Average hourly earnings in February 1934, recorded as 36.6 per hour. February 1935, recorded as 42.3. Average man hours, February 1934, recorded as 32.2. February 1935, as 30.9.

It shows again a substantial increase right now in the purchasing power of a large group of people with millions of dollars going into pay rolls, and therefore supplying consuming purchasing power throughout the country.

I have stated yesterday that if the N. R. A. should not be renewed, it is our judgment that we are going to get an immediate reduction in wages throughout the country, and more unemployment. We have already received telegrams sent in from the Regional Compliance Board in Omaha that a trucking company has already announced a reduction of 10 percent, to take effect within the next 2 weeks, because they said that the N. R. A. is not going to be renewed, and therefore are coming back again to wage slashing and wage reductions.

Senator WALSH. Has it been your observation, Mr. Witness, that unfortunately the establishment of minimum wages and shorter working hours has resulted in a substantial increase in the price of commodities, with the result that the public are not purchasing as much as formerly and therefore there is not much gain in many industries in employment?

Mr. HILLMAN. May I answer the question with the record that I have from one industry that I am closely associated with, and that is the clothing industry, where the code has given a large increase to the workers in that industry. The record of that industry——

Senator WALSH (interrupting). The cotton-cloth people allege as one of their handicaps the fact that there has been a 100-percent increase in the price of cotton cloth—many kinds of cotton cloth—and that has resulted in a rapid decline in the construction of cotton cloth, and notwithstanding the fact that wages have improved and

minimum wages have been established, the industry is in serious injury of collapsing, and also that the number of unemployed are now rapidly increasing because the price has gone beyond the purchasing power of the people.

Mr. HILLMAN. May I answer you, Senator, by stating that in the clothing industry the record is that the prices to the consumers have gone down 20 percent from a year ago up to this season.

Senator WALSH. So you say now, do you, that in the cotton-garment business——

Mr. HILLMAN (interrupting). In men's clothing.

Senator WALSH (continuing). Notwithstanding the larger number of people employed, and notwithstanding the minimum wages established wiping out the $4, $5, and $6 a week salary, and notwithstanding shorter hours and higher wages, the price of cotton garments——

Mr. HILLMAN (interrupting). Men's clothing, I am giving you, Senator. Prices have gone down 20 percent to the consumer.

Senator WALSH. That is the first thing I have heard of that has gone down.

Mr. HILLMAN. Twenty percent, compared with a year ago, and the reason for it is that, after all, the determination of cost is volume. If there is more purchasing power in the country and an establishment is able to increase its volume of production, it reduces its overhead. Labor is only a part of the cost.

Senator WALSH. Do you think that is true, generally?

Mr. HILLMAN. Senator, my observation is this, that prices went up very high in the first 6 months of N. R. A.

Senator WALSH. Naturally.

Mr. HILLMAN. It went up because of the speculative boom, because employers thought that they can make up for lost time.

Senator WALSH. And because of the cost of production?

Mr. HILLMAN. Not so much.

Senator WALSH. You do not mean to argue that it was not necessary to increase the cost of commodities when the hours were shortened and wages maintained and minimums established?

Mr. HILLMAN. Of course, but if it had been increased only to the proper level, the additional consuming purchasing power in the country would more than make up for any difficulty to an employer because of an increased cost.

Of course, a number of employers have tried just to raise prices sky high, and wherever there is fair competition, employers have come down in many industries to look to volume of production instead of scarcity and control of production, and because of that, prices are coming down, and these employers are doing much better than they have done a year ago by trying to hold up prices beyond the purchasing power of the consumer.

Senator KING. Is it not a fact that generally speaking throughout the United States, prices have risen much more rapidly than wages have increased?

Mr. HILLMAN. That is the difficulty, Senator——

Senator KING (interrupting). Please answer that yes or no.

Mr. HILLMAN. I am not in a position to speak for all prices, but I would say to you——

Senator KING (interrupting). Well, if you do not know, all right. Is it not a fact that the unit of production of men's clothing declined 30 percent in 1934 as compared to 1933? Answer that yes or no.

Mr. HILLMAN. 1933?

Senator KING. If you know.

Mr. HILLMAN. No——

Senator King (interrupting). You do not know——

Mr. HILLMAN (interrupting). Compared by the season——

Senator KING (interrupting). I will read the question if you do not understand it. Is it not a fact that the unit production of men's clothing declined 30 percent in 1934—speaking of the calendar year—as compared with the calendar year of 1933?

Mr. HILLMAN. I have not got that information.

Senator KING. You could not answer it, then?

Mr. HILLMAN. No.

Senator HASTINGS. But you did say, did you not——

Mr. HILLMAN (interrupting). Pardon me, Senator. My information is that comparing these manufacturing seasons of 1935 compared with 1934, there is an increase in the clothing industry of 20 percent in units.

Senator KING. Let me ask you another question. Is it not a fact that the number of employees or the number of productive men, man-hours, declined much more than 30 percent between 1934 and 1933?

Mr. HILLMAN. The number of people employed?

Senator WALSH. Listen to the question.

Senator KING. Is it not a fact that the number of employees or the number of productive man-hours declined more than 30 percent in 1934 over 1933?

Mr. HILLMAN. I shall give you the answer on the number of employees that I have. I have not got it by man-hours——

Senator KING (interrupting). I am speaking of the calendar year.

Mr. HILLMAN. I am giving you the years. June 1932, the people employed in the clothing industry were nineteen two thousand——

Senator KING (interrupting). I beg your pardon. I am not asking for 1932.

Mr. HILLMAN. May I give you the whole picture of that industry?

Senator KING. You can answer that question, and then you can give as many pictures as you like.

Mr. HILLMAN. I should like to give you that picture, Senator, because after all I am sure you are concerned to see what has happened in the reemployment in that industry.

Senator KING. I am talking about the N. R. A., and you are talking about it. And I am inquiring as to whether or not the number of employees in that industry to which you refer, for the calendar year 1934, was less by 30 percent than the number of employees or the the productive man power in 1933?

Mr. HILLMAN. No.

Senator COSTIGAN. I submit that this is not a court trial, and I hope the witness will be permitted to answer in his own way. [Applause.]

Senator HASTINGS. Mr. Chairman, I am wondering if this audience appreciates that it is here at the courtesy of the committee.

Senator KING. Evidently some of them do not.

Senator HASTINGS. I do not see why we should be interrupted by that sort of demonstration, and I suggest that we get some officers here and instruct this audience that they are here as a courtesy of the committee, and those who interrupt it will be put out of the room.

Senator KING. Those instructions will be given. If you will please answer the question, and then make any explanation.

Mr. HILLMAN. I say no; and will you permit me to give you the actual figures of the number employed in the industry? March 1933, 109,000, and March 1934, 140,000, which is obvious that that statement is not correct.

Senator HASTINGS. Do you know about the man-hours?

Mr. HILLMAN. The man-hours I do not know, but——

Senator HASTINGS. Do you know whether your statement is correct? The question is man-hours and the number.

Mr. HILLMAN. And therefore I have said that I will answer the part I do know and will be glad to supply the committee with the information about the other part that I do not know about. The number increased from 1933 to 1934 from 109,000 to 140,000, and my estimate is that at this time there are 150,000 employed in the clothing industry.

Senator KING. Now if you answer my question, if you can. Was not the reduction of 30 percent in the year? I did not ask about any particular month in the year.

Mr. HILLMAN. Senator—this is a seasonal industry. March is a full-production month, and therefore when you compare the same month by the years, obviously you do get the proper comparison.

Senator KING. But you do not answer it for the year, then.

Mr. HILLMAN. I would say that these figures hold good along these lines for the year.

Senator KING. All right; now proceed.

Senator BLACK. May I ask you a question about that clothing business. You say that the prices, according to your figures, have gone down in clothing in the last year?

Mr. HILLMAN. Yes; 20 percent.

Senator BLACK. I had yesterday, and I imagine most of the Senators received it, a letter from a tailoring shop here in Washington, with five samples of rather good looking cloth, and offered to make suits for $33.50 tailor-made. Is that much above what it has been for the last 5 or 6 years?

Mr. HILLMAN. Senator, it would depend upon the quality of the garment; it would depend upon the mark-up of that particular retailer. I will say to you that a large department store has run two large sales in New York City selling men's clothing at $10 a suit.

Senator BLACK. This was a tailor-made suit, made to measure by a good tailor. Isn't there a good deal of competition among the tailors?

Mr. HILLMAN. There is high competition in the clothing industry everywhere, and there are no price protections or price floorings or any of that kind of thing that could maintain prices.

Senator BLACK. An industry where there are no price floors and no agreements among themselves, as far as the codes are concerned, and there is active competition, the figures show that the cost has gone down 20 percent?

Mr. HILLMAN. From last year. And wages have gone up from 50 to 60 percent.

Senator BLACK. A question was asked you about the necessary increasing of cost due to shorter hours and better wages. Is it a well-recognized fact that if you produce more and work continuously in a plant, that you can produce cheaper per unit than you can where you work only a short time each week?

Mr. HILLMAN. Senator, I have answered that same question before you came in. It is my experience that if a manufacturing plant is concentrating on getting volume of production, they can pay more money to labor, higher wages, and still come out better than by getting just a small part of the production, because labor is only a part, and in some industries a very small part. I would say that the average would not go above 22 or 23 percent that is paid out to labor in American industry.

Senator BLACK. So that so far as the costs are concerned and the ability of the industry to produce without proportionate increase in the cost, it is true, is it not, that producing more and producing more continuously, that they will be dividing up the regular overhead—such as interest, insurance, and other regular expenses—so that it is not necessarily that more production, even with greater wages, means necessarily greater cost per unit of production?

Mr. HILLMAN. Quite right, Senator.

Senator BLACK. Another question in that connection——

Mr. HILLMAN (interposing). May I say this? Of course there ought to be some increase, but not the kind of an increase that will keep it out of the average person's reach.

Senator BLACK. You say there ought to be some increase. There are other things that enter into cost besides labor. Profits enter into it?

Mr HILLMAN. Yes.

Senator BLACK. Sometimes high salaries enter into it?

Mr. HILLMAN. Yes.

Senator BLACK. Sometimes bonuses enter into it?

Mr. HILLMAN. Of course.

Senator BLACK. Sometimes contracts with associates and subsidiaries and holding companies enter into the cost?

Mr. HILLMAN. It is a matter of record.

Senator BLACK. Is there any way that any one man can make a statement in any particular industry that by reason of a 10-percent or a 15-percent or even a 20-percent increase in wages, that must necessarily increase the price at which the goods were sold? Is there any man on earth that can make a statement like that without a critical analysis of what has entered into the cost with reference to salaries, bonuses, and other expenses?

Mr. HILLMAN. Yes; to a degree you are quite right, Senator.

Senator BLACK. What I want to know is, these people all the time talk about the fact that when you increase wages you have to increase prices. That seems to be under an assumption that nothing enters into it but wages.

Mr. HILLMAN. Of course, it is a fallacious theory.

Senator BLACK. What is the average cost of labor proportionately to the value added by manufacturers of all the industries in America?

Mr. HILLMAN. It is very hard to say for all industries. I have not the figures here, but they will go up from some industries as low as where the labor cost is only 3 percent. The highest, I believe, is 43 percent.

Senator BLACK. I saw some figures a few weeks ago, gotten out by the Associated Press, taken from Government statistics, that the average was 16 percent.

Mr. HILLMAN. I have estimated 22 to 23 percent. Of course, Senator, you cannot average industry. An industry that has a 43-

percent labor cost cannot say that that is the average with the other industries. They have to sell on their own costs, but you are quite right, Senator, if we could get sufficient purchasing power in the country which would keep our factories running, and therefore reducing overhead, and making every part of the investment carry its profit end or its share of allocation of the expense, there is no question in my mind that industry not only could afford but ought to pay, in its own interest, all the time, a higher wage level.

Senator BLACK. A lot of these factories that are running only 2 days a week, if they had enough customers with money to buy their goods to run 6 days a week, their overhead necessarily would not be any more.

Mr. HILLMAN. Not much more.

Senator BLACK. That would not necessarily raise taxes on the value of their property, would it? Nor their bond interest, nor their interest on their investment?

Mr. HILLMAN. Senator, the record up until 1933 just proves completely that line of thought. We have gone through with wages being reduced all the time, and the cost, as far as labor being reduced——

Senator BLACK (interposing). What I am getting at is this——

Mr. HILLMAN (interposing). Pardon me if you will just permit me?

Senator BLACK. Certainly.

Mr. HILLMAN. But because of the lack of purchasing power in the country, there were no consumers, and industry was in the red, because if you have a standing cost of overhead, bond interest, and all of the other costs, and there is only 2 days a week of work, even if labor worked for nothing or for almost nothing, it does not mean that industry will be run at a profit.

Senator BLACK. What I am getting at is this. The question is often asked if increased wages and shorter hours does not necessarily mean increased prices. Is it not just as true and as inevitable that the failure to work continuously in a factory and the working of 1 or 2 days a week must necessarily increase the price of the unit of production?

Mr. HILLMAN. Unquestionably. I would say if the factory could run 5 days a week, no matter what wage within reason is paid, it will run more successfully than a low-sweated wage with the factories only working 1 or 2 days a week.

Senator BLACK. That is all.

Senator COSTIGAN. Mr. Hillman, what Senator Black says is manifestly true in industrial experience. I have also in mind a large operating coal company in Colorado of which you know, which increased wages and reduced hours in 1927 and which since that time has substantially lowered costs of production per unit of the product. I refer to the Rocky Mountain Fuel Co. That result is not unusual in the history of higher wages and shorter hours, is it?

Mr. HILLMAN. It is not unusual at all. The sale that I have referred to was carried on in New York City at a cost to the consumer of $10 for a suit of clothes—of course, it was not the best kind of clothes—after an investigation has been found to be made in a factory paying more than the average wage in that particular territory.

Senator COSTIGAN. In other words, shorter hours and higher wages do not necessarily increase the cost of labor per unit of the product? They may or they may not in a given industry.

Mr. HILLMAN. It depends on the industry, and it increases, and then it goes into purchasing channels and because of that it helps industry and helps the country as a whole.

Senator HASTINGS. How long have you been a member of the National Industrial Recovery Board?

Mr. HILLMAN. Since September.

Senator HASTINGS. That is when it was organized?

Mr. HILLMAN. When it was organized.

Senator HASTINGS. How many members are there of that Board?

Mr. HILLMAN. Five members of the Board and two ex-officio members.

Senator HASTINGS. How long have you been president of the Amalgamated Clothing Workers of America?

Mr. HILLMAN. Twenty years.

Senator HASTINGS. You organized it, did you not?

Mr. HILLMAN. No. There was an organization before, but I have been the chief executive of the organization.

Senator HASTINGS. What do the members of that organization pay in the way of fees and dues?

Mr. HILLMAN. From $1 to $2 a month, depending on certain localities.

Senator HASTINGS. What do they pay to join?

Mr. HILLMAN. Our constitution prohibits any local union from charging more than $10 initiation fee. A great number of our organizations charge no fee at all.

Senator HASTINGS. Has your organization accumulated any money?

Mr. HILLMAN. We had quite a considerable amount of funds. It shows that we do own two banking institutions, one in Chicago and one in New York.

Senator HASTINGS. What are the total assets of your association?

Mr. HILLMAN. The total assets of the national association?

Senator HASTINGS. Yes.

Mr. HILLMAN. After the depression, our assets are still over $1,000,000.

Senator HASTINGS. What salary do they pay you?

Mr HILLMAN. My salary is $7,500 a year, but we have voted a reduction of 15 percent, and we have not restored that reduction as yet.

Senator HASTINGS. Was it ever more than that?

Mr. HILLMAN. No.

Senator HASTINGS. What effect has the N. R. A. had on that organization?

Mr. HILLMAN. The N. R. A. has had the effect of giving reemployment to most of the people in the industry, and increased it from a low of 92,000 in 1932, to what I estimate as 150,000 right now, and has increased wages about 50 or 60 percent.

Senator KING. Let me interrupt you right there. Has not the increase been brought about by your getting Philadelphia into your organization?

Mr. HILLMAN. The increase of what?

Senator KING. In the number of employees, by bringing in your organization, industries in other cities than those that were in your organization in 1927, 1928, 1929, 1930, 1931, and 1932?

Mr. HILLMAN. I am referring to the clothing industry.

Senator KING. I am referring to the clothing industry also.

Mr. HILLMAN. Pardon me. The Philadelphia clothing market joined our organization in 1929.

Senator HASTINGS. How many members of your organization did you have in May of 1933?

Mr. HILLMAN. It is hard to remember, because the members who are out of work of course cannot pay dues, and we do not drop them from our rolls?

Senator HASTINGS. Then they remain members?

Mr. HILLMAN. They remain members. We hold them as members as long as they are attached to the industry. If the people cannot work they are not required to pay their dues. If they cannot find work.

Senator HASTINGS. You know about how many you had?

Mr. HILLMAN. I would say that in May, probably our people who have paid to our organization at that time were probably from 60,000 to 70,000, and probably the payments right now will run from 125,000 to 140,000.

Senator HASTINGS. How many members do you estimate you had in May?

Mr. HILLMAN. Working members?

Senator HASTINGS. No; members.

Mr. HILLMAN. Actual members? Our industry even during that time was under contractual relations with the employers of 75 or 80 percent of the employees in the industry.

Senator HASTINGS. That is not an answer to the question.

Mr. HILLMAN. And if 92,000 people were employed at that time in the industry, I would say that the membership would have been around 70,000.

Senator HASTINGS. You said that there were from 60,000 to 70,000 that were paid?

Mr. HILLMAN. Yes, sir.

Senator HASTINGS. Then there were very few of your members out of employment?

Mr. HILLMAN. We also have members in related branches like the shirt industry, and I am confining myself only to the membership in the clothing industry.

Senator HASTINGS. Let me have the numbers in the whole organization.

Mr. HILLMAN. I shall be very glad to supply that to you, Senator.

Senator HASTINGS. Give them to me the best you can.

Mr. HILLMAN. Our membership at that time, I would say, was estimated from 60,000 to 70,000. Probably, in that, we have figured 15,000 or 20,000 from the shirt industry, or 15,000, and today it is estimated from 125,000 to 140,000.

Senator HASTINGS. What wages were the employees getting in May 1933 in your organization?

Mr. HILLMAN. Probably the average wage at that time has come down for the industry to 30 or 32 cents or 35 cents an hour. Probably in the union markets, they were as high as 50 cents an hour.

Senator HASTINGS. Take the cutters, for instance. What were the cutters getting?

Mr. HILLMAN. The cutters were receiving in New York City $50 a week.

Senator KING. What year was that?
Mr. HILLMAN. May 1933.
Senator HASTINGS. What are they receiving now?
Mr. HILLMAN. $50 a week.
Senator HASTINGS. The same?
Mr. HILLMAN. Yes. We believed it was a fairly good scale, and that it ought not be increased.
Senator HASTINGS. Is that the highest pay?
Mr. HILLMAN. That is the highest pay.
Senator HASTINGS. Take the next highest.
Mr. HILLMAN. The rest are all piecework, and it is very hard to say what they are getting.
Senator HASTINGS. You have contracts with the manufacturers, have you not?
Mr. HILLMAN. Yes.
Senator HASTINGS. What kind of a contract did you have in May 1933 and what change has been made in it due to the N. R. A.?
Mr. HILLMAN. Since N. R. A. we have had an average increase of about 45 percent in the unionized part of the clothing industry, leaving out the cutters who were a well-paid branch and were not taken care of.
Senator HASTINGS. Then just tell me what your original contract was and how that was changed by the N. R. A. so far as these piece-workers are concerned?
Mr. HILLMAN. Our contracts are piecework contracts, as a majority or 90 percent of the industry is working on a piecework system.
Senator HASTINGS. Did you or not have an agreement with the manufacturers of clothing in New York in May 1933 on piecework?
Mr. HILLMAN. Yes, sir.
Senator HASTINGS. Was that contract changed after the N. R. A. went into effect?
Mr. HILLMAN. In conference the manufacturers and the workers jointly agreed to an increase.
Senator HASTINGS. What sort of an increase was that?
Mr. HILLMAN. There were two increases, amounting to about 45 percent.
Senator HASTINGS. You have told me that before, but I would like to get a little of the details of that change.
Senator KING. Let me ask you this—was the agreement in writing? This change?
Mr. HILLMAN. No, those were conferences.
Senator KING. Was it reduced to writing?
Mr. HILLMAN. No; there was no written agreement on that. Our agreements are 3-year agreements. During the depression we would meet with the employers and agree upon a reduction, and during the N. R. A. period, we have agreed with the employers on an increase in wages.
Senator KING. Does the N. R. A. code for the clothing industry say anything about wages?
Mr. HILLMAN. The N. R. A. code put in first the provision that a 20-percent increase was to be given to the pieceworkers for the reduction of hours that were from 44 to 36 hours a week. That went in affecting the whole industry.
Senator KING. Did the code say that? I would like to know that for my own information.

Mr. HILLMAN. The interpretation of the code that people should be compensated for the hours reduced was agreed to for the whole industry on a 20-percent increase for the reduction from 44 hours to 36.

Senator HASTINGS. So that the worker did not get any more in his pay envelop but got a reduction in his hours?

Mr. HILLMAN. Senator, he had the theoretical hours. They were working 20 or 18 hours a week before N. R. A., and so that he actually did get the 20-percent increase in his pay envelop.

Senator HASTINGS. I would like to find out how that was. The N. R. A. provides in that code, as I understand it——

Mr. HILLMAN (interposing). It is a reduction in hours.

Senator HASTINGS. A reduction in hours.

Mr. HILLMAN. To 36.

Senator HASTINGS. And a 20-percent increase in pay, so as to make his pay envelop even. Was that not the purpose?

Mr. HILLMAN. To take care of the reduction of hours.

Senator HASTINGS. You say it did not work that way?

Mr. HILLMAN. It did not work that way, because the people did not work the full hours because there was no work in the industry.

Senator HASTINGS. Well, suppose a man worked 40 hours before the code or 50 hours or whatever it was, and then worked 40 hours after the code. My understanding is that the code increased the price 20 percent so that he could get the same pay for working 40 hours——

Mr. HILLMAN (interposing). Thirty-six hours. The code provides for 36 hours.

Senator HASTINGS. Thirty-six as against what?

Mr. HILLMAN. As against whatever it was. In nonunion plants, they worked them 60 hours a week.

Senator HASTINGS. Do you remember the exact provision of that code?

Mr. HILLMAN. The code provides that hours should be limited to 36 hours a week. The code authority and the administrator determined what ought to be the compensation to the workers for the reduction of hours. The code provides also implementation for bringing up the people who are above the minimum to keep the same proportion and it has been interpreted by the administrator, with the code authority, that as much as it has taken to increase the 20 percent of the lowest paid people to bring them up to the minimum, which is 40 cents an hour, that the same kind of an increase should be given to the people up to $30 a week, so as to maintain the differential between the skilled workers and the unskilled.

Senator HASTINGS. Is there any difficulty in ascertaining whether a person is living up to that code?

Mr. HILLMAN. There is a very able and honorable code authority, having investigators doing their best to enforce the code.

Senator HASTINGS. That does not answer my question.

Mr. HILLMAN. Why not?

Senator HASTINGS. I asked you whether there was any difficulty in doing it?

Mr. HILLMAN. I am merely a member of the code authority. I am not in the administrative branch.

Senator HASTINGS. Can you answer that question or not?

Mr. HILLMAN. I would say that there was some difficulty, of course. People who do not want to pay a proper wage have put a great number of obstacles to enforcement.

Senator HASTINGS. Did you have anything to do with this original code for the clothing industry?

Mr. HILLMAN. I represented my own organization at the hearings, and I represented the Labor Advisory Board.

Senator HASTINGS. When did you first have a meeting with respect to drafting a code?

Mr. HILLMAN. A meeting in this city? I would have to go back to the date.

Senator HASTINGS. Did you have a meeting before the law was passed?

Mr. HILLMAN. Oh, yes; we had many conferences with employers, at least with the organized employers.

Senator HASTINGS. In contemplation of this act passing?

Mr. HILLMAN. After the act was passed.

Senator HASTINGS. Before the act was passed?

Mr. HILLMAN. Yes; some.

Senator HASTINGS. You had some meetings before?

Mr. HILLMAN. Yes.

Senator HASTINGS. What was the first thing you did? With whom did you meet?

Mr. HILLMAN. With a number of the outstanding employers.

Senator HASTINGS. Where were they located?

Mr. HILLMAN. In the major clothing markets in the country.

Senator HASTINGS. What are they? You know them, do you not?

Mr. HILLMAN. New York, Chicago, Philadelphia, Baltimore——

Senator KING (interrupting). Rochester?

Mr. HILLMAN. Rochester, Cinncinati. Then we get down to Boston, Indianapolis, Ind., and St. Paul, Minn.

Senator HASTINGS. Are all of those employers employing people that are members of your organization?

Mr. HILLMAN. Some. A few of them were nonmembers not dealing with our organization.

Senator HASTINGS. Let me inquire whether when you first got together for the purpose of drafting this code, there were any employers invited who were not employing the members of your organization?

Mr. HILLMAN. The employers in the clothing industry extended invitations to the whole industry to get together and work out a proposed code.

Senator HASTINGS. All right. Now, you are an intelligent witness and you know when you are answering my questions, and when you are not, and that question was perfectly clear. I asked when you first got together for the purpose of drafting this code, whether there was any employer in it who did not have in his employ the members of your organization? If so, who was it?

Mr. HILLMAN. Cohan, Goldman & Co. was operating a number of nonunion shops and——

Senator HASTINGS. Where is he located?

Mr. HILLMAN. Located with offices in New York, manufacturing in New York City, Poughkeepsie, N. Y., Baltimore, Md., and New Bern, N. C.

Senator HASTINGS. Now I will ask you another question——

Mr. HILLMAN (interrupting). I believe that Richman Bros. were parties to the later conferences, or earlier conferences. I cannot say surely.

Senator HASTINGS. Let me inquire whether the first thing you did was to organize an association——

Mr. HILLMAN (interrupting). I personally——

Senator HASTINGS (interrupting). Before you drafted any code?

Mr. HILLMAN. Of course not. The employers organized an association, not I. I represented the labor group.

Senator HASTINGS. You were there, were you not, and took part in it?

Mr. HILLMAN. In the organization?

Senator HASTINGS. Yes.

Mr. HILLMAN. No; I was invited to Washington after the conference, I was invited, after they organized their association to come in and say a few words to the group.

Senator HASTINGS. Did they invite you or did you invite them?

Mr. HILLMAN. They invited me, of course, Senator. Of course.

Senator HASTINGS. You know the name of that organization, do you not?

Mr. HILLMAN. I think it is the U. S. A. organization.

Senator HASTINGS. Was it not organized before this act was finally passed?

Mr. HILLMAN. Probably. My memory is not quite clear. It was organized, I think, when the discussion of the act was going on in Congress.

Senator HASTINGS. So that you organized this association——

Mr. HILLMAN (interrupting). Pardon me, Senator, I did not organize that association.

Senator HASTINGS. All right. I do not mean to infer that you did.

Mr. HILLMAN. I just want that clear.

Senator KING. Is it not a fact that at your meeting held on May 21 at the Mayflower Hotel, there were only 24 of you present, and you were there?

Mr. HILLMAN. If you say 24, I suppose someone has given you that information, and I do not question it. If it is 24, they must have been there in a representative capacity.

Senator KING. Will you answer the question?

Mr. HILLMAN. That is what I have been referring to, that I was invited after they organized, to come in and say a few words to the meeting.

Senator KING. The N. R. A. had not been organized yet? The law had not been passed?

Mr. HILLMAN. But there was discussion of the law. I think we were at that time discussing what was called the Connery-Black bill.

Senator BLACK. They were really meeting to defeat my bill, were they not?

Mr. HILLMAN. Senator, I will say this to you again, that I do not know what they were meeting for. I was not meeting for that purpose.

Senator BLACK. That is what they were discussing, was it not? How they could best defeat it?

Mr. HILLMAN. Senator, I do not know what those people were discussing; I have to assume it. I think what they were discussing

was, how can the legitimate manufacturer paying a decent wage be protected against sweatshops, who were putting every legitimate manufacturer out of business.

Senator BLACK. Did they discuss whether or not they were for or against that bill?

Mr. HILLMAN. I think, Senator, that you had at that time a great number of employers back of you.

Senator BLACK. Employers?

Mr. HILLMAN. Employers.

Senator BLACK. Who were they?

Mr. HILLMAN. Throughout the country, Senator, a number of employers were looking for anything to be saved from utter destruction, and a number of employers, you will be surprised even now, although they dare not come out openly, believe that your bill is the solution for unemployment.

Now, Senator, I am not joining at this time on that position, but there are a great number of them who believe that N. R. A. has not gone far enough to bring about reemployment, and while employers—I am speaking of some employers—and labor organizations would have liked to see reemployment worked out through the code method, the only objection in some of the minds of the people who are perfectly back of your bill is that we would rather have an elastic law. But if the N. R. A. in the future will not provide proper reemployment, I believe not only all of labor but a great number of the employers in the country will back your bill 100 percent.

Senator BLACK. If you will pardon me, I do not want to interrupt you.

Senator HASTINGS. That is all right.

Senator BLACK. I want to ask one other question. Were you present when the President made a speech down at Constitution Hall at the time that there were a large number of these employers down there, and told them that we had not reduced hours enough and had not raised wages high enough, and urged them to join in an effort to further reduce hours and raise wages?

Mr. HILLMAN. Yes, Senator.

Senator BLACK. Voluntarily.

Mr. HILLMAN. Yes; I was there.

Senator BLACK. How many voluntary reductions of hours and how many voluntary increases of wages were there on the part of those employers who were under the code, since that time?

Mr. HILLMAN. Very few.

Senator BLACK. Any?

Mr. HILLMAN. Some.

Senator BLACK. How many?

Mr. HILLMAN. I would have to look at the industry figures. I believe there were 2 or 3, and I would not like——

Senator BLACK. Out of how many?

Mr. HILLMAN. Out of five or six hundred.

Senator BLACK. That is about the way it was, about the number that were for my bill, isn't it? [Laughter.]

Mr. HILLMAN. Senator, I believe that the official spokesmen for the industry, having particular reference to the National Manufacturers Association, do not represent the real feeling in a large part of industry.

Senator BLACK. Thank you, Senator.

Senator HASTINGS. Mr. Hillman, you remember that organization was incorporated, was it not, in the month of May 1933?

Mr. HILLMAN. It must have been. I am not a member of that organization.

Senator HASTINGS. Only the employers are members of that organization?

Mr. HILLMAN. Yes; of course.

Senator HASTINGS. And were not all of the members of that organization or association located in only a few places in the country?

Mr. HILLMAN. No, Senator; only a few places were out of that picture. I would like to——

Senator HASTINGS (interrupting). Just a minute. Was there not another organization formed later than that?

Mr. HILLMAN. Yes, Senator, representing a very small part of the clothing industry, mostly big people, not small people, but people mostly who have paid as low as 5 and 10 cents an hour as wages.

Senator HASTINGS. I wish you would answer my question. It is not necessary to condemn that organization just because they organized. I did not ask you for that. I just asked you whether there was another organization.

Mr. HILLMAN. Yes, sir.

Senator HASTINGS. That was an organization that did not agree with the first organization?

Mr. HILLMAN. It must have been that way.

Senator HASTINGS. How much influence did they have in the drafting of this code—the second organization?

Mr. HILLMAN. I think that these gentlemen were continuously together with the two associations, and, Senator, you may be surprised that the two associations opposed labor's request for the short workday, or rather, they offered a 40-hour week; the two associations. Even those associations dealing with the labor organizations.

Senator HASTINGS. Then who succeeded in getting it to the 36-hour week?

Mr. HILLMAN. After many conferences with the Administrator, it was agreed by the large association representing 85 percent of the people in the industry or 90 percent of the employers by numbers—probably more than 90 percent——

Senator HASTINGS. You mean of the first association?

Mr. HILLMAN. Of the large association; yes, sir. That association which is representative of the clothing industry.

Senator HASTINGS. It represents what percentage?

Mr. HILLMAN. In numbers of individuals, more than 90 percent.

Senator KING. Do you mean the men's clothing industry?

Mr. HILLMAN. The men's clothing industry. More than 90 percent of the individuals.

Senator HASTINGS. As a member of this board, you make that statement to this committee as a fact that is known to you?

Mr. HILLMAN. As a member of this board, I have my estimates that the clothing industry is composed of from two to three thousand employers, that the organization organized in opposition to the first organization never claimed more than 111 individuals——

Senator HASTINGS (interrupting). I am not inquiring about what they had. You said the first organization had 90 percent.

Mr. HILLMAN. They were representative, because the employers who opposed fair wage standards and decent labor conditions obviously joined the other group.

Senator HASTINGS. Did everybody join one group or the other?

Mr. HILLMAN. Those who did not join in opposition, of course, were in favor of the majority group.

Senator CLARK. How many actually were in the first organization, Mr. Hillman?

Senator HASTINGS. That is what I am trying to get at. He said 90 percent.

Mr. HILLMAN. I would say in the sense that the opposition was well organized. Those employers who were in favor of better conditions, a number of them did not care to join.

Senator CLARK. How many did care to join?

Mr. HILLMAN. I would have to find the number of people.

Senator CLARK. Could you find that out for us?

Mr. HILLMAN. Yes, sir.

Senator HASTINGS. Do you still insist it was 90 percent?

Mr. HILLMAN. I would say that the opposition was less than 10 percent. I could not say that the membership of that organization was 90 percent.

Senator HASTINGS. Then this organization that was created in May 1933, you say there is only 10 percent of the industry that is opposed to that?

Mr. HILLMAN. In membership they never even had 10 percent. I think less than 5 percent.

Senator HASTINGS. How many members are there on this Men's Clothing Code?

Mr. HILLMAN. Senator, I really could not tell you exactly. I believe about 22 or 24. I may be wrong.

Senator HASTINGS. How were they selected?

Mr. HILLMAN. By the different organizations of employers throughout the country, by selection from the unorganized employers—I am not speaking of unorganized in the union sense by the administration. I think they have provided that 4 or 6 members should be selected by those who are not members of that organization.

Senator HASTINGS. How many members were selected from this original organization?

Mr. HILLMAN. I would have to go down to the records, Senator. Probably 12 or 14 or 15. There are 5 labor men on that code, and probably about 14 or 15 from that organization.

Senator HASTINGS. How many of those labor members are members of your organization?

Mr. HILLMAN. Three of the Amalgamated Clothing Workers and two of the United Garment Workers.

Senator HASTINGS. That is a different organization.

Mr. HILLMAN. Two organizations are operating in the industry.

Senator HASTINGS. Three from yours and two from the other?

Mr. HILLMAN. Yes.

Senator HASTINGS. Who selected them?

Mr. HILLMAN. The Labor Advisory Board.

Senator HASTINGS. Who composed the Labor Advisory Board?

Mr. HILLMAN. Members connected with the American Federation of Labor, members not connected with any labor organization, like Father Haas. Dr. Wolman at one time was the chairman of the Board, and he had no organization affiliation.

Senator HASTINGS. I want to know who selected the five members of those clothing workers?

Mr. HILLMAN. The Labor Advisory Board had sent in a recommendation of five of the people as nominations, and they were approved by the administrator.

Senator HASTINGS. Did any of these men recommend anybody to these boards?

Mr. HILLMAN. Mr. Rickard and myself, of course, had made the recommendations.

Senator HASTINGS. You made the recommendations?

Mr. HILLMAN. Mr. Rickard, President of the United Garment Workers of America.

Senator HASTINGS. Were your recommendations followed?

Mr. HILLMAN. Yes, sir.

Senator HASTINGS. So that you actually picked three of them?

Mr. HILLMAN. Not I personally. The organization I represent picked three of them.

Senator HASTINGS. Who runs, that?

Mr. HILLMAN. A general executive council.

Senator HASTINGS. Did you submit the names to them?

Mr. HILLMAN. Yes, sir.

Senator HASTINGS. Where did you submit them? At what meeting?

Mr. HILLMAN. In long-distance calls, meetings that we had in New York, probably, or Chicago. I cannot quite remember the time, but they were the choice of the executive council of our organization.

Senator HASTINGS. That is all, Mr. Chairman.

Senator COSTIGAN. Mr. Hillman, Senator Hastings asked you some interesting questions about your organization, its revenues, and resources. Before you conclude, will you tell us what your organization has done to relieve some of the worst effects of unemployment among its members in the way of paying unemployment benefits?

Mr. HILLMAN. Our organization, in conference with the employers in the city of Chicago, in 1923 established the first unemployment insurance joint contribution fund. In Chicago, since 1923, that has paid out about $7,000,000 to the people who were out of work. In 1926, I believe, we entered into the same agreement in Rochester and New York City, and hundreds of thousands of dollars have been paid out there to workers out of employment.

Senator HASTINGS. Did you extend it to Russia?

Mr. HILLMAN. I have no connection with Russia, Senator.

Senator HASTINGS. Your organization had at one time, did it not?

Mr. HILLMAN. No, sir. Our banking institution has established a remittance service, a service for people who were sending money to help out their friends or relatives, and in order that that money that went into Russia should not be paid out in worthless rubles, we made an arrangement where actual American dollars were delivered to the people in Russia. Eleven hundred banking institutions have used our bank as the service. The American Express Co. established the same service 6 months after we had established it.

Senator COSTIGAN. Nobody has criticized J. P. Morgan & Co. for using your facilities to extend credit?

Mr. HILLMAN. I know that the Mellon Bank of Pittsburgh has used our facilities.

Senator HASTINGS. But did you not organize a corporation for the purpose of going into the clothing business in Russia back in 1922?

Mr. HILLMAN. No, we just submitted to them a temporary loan to buy machinery in the United States for their factories.

Senator HASTINGS. Well, did you not in an address before your association, urge them to organize a corporation to go into the clothing business——

Mr. HILLMAN (interposing). Not in the clothing business, but to help them fix up their plants over there.

Senator HASTINGS. Then you were engaged in helping out the Russian situation?

Mr. HILLMAN. You mean the Russian situation in what way?

Senator HASTINGS. I did not say in what way. I just inquired——

Mr. HILLMAN (interposing). If you mean to say, Senator——

Senator HASTINGS (interposing). I inquired whether or not your organization had extended any help in any way to Russia.

Mr. HILLMAN. If you mean, Senator, that we recognized Russia a few years before the country recognized them, that is probably quite right, but these were financial transactions.

Senator HASTINGS. I have no criticism of what you did, but I inquired whether you had done anything in Russia and you assured us you had no connection with Russia, and that is the reason I asked you.

Mr. HILLMAN. I have stated that they are financial transactions. Not through the Amalgamated Clothing Workers.

Senator HASTINGS. Was it not through the members of your association that you appealed to, to buy $10 shares of stock?

Mr. HILLMAN. We appealed to anyone, not merely members of our organization.

Senator HASTINGS. At that particular time, were you not appealing?

Mr. HILLMAN. Yes; I was appealing at that time to our convention.

Senator BLACK. Mr. Hillman, do you know of any business enterprises in the United States that have declined at anytime to sell anything they could to Russia?

Mr. HILLMAN. The Chase National Bank was in there loaning them millions when we loaned them tens of thousands.

Senator BLACK. You surely do not mean that the Chase National Bank would lend money to Russia?

Mr. HILLMAN. Senator, that is the record.

Senator BLACK. Do you know anybody else in this country who refused to sell anything to go to Russia in the way of machinery?

Mr. HILLMAN. I know a number of manufacturers who came to our banking institution asking us whether we could arrange loans for them to sell machinery to Russia.

Senator BLACK. Do you know whether or not a large part of the machinery that has been used in Russia and is being used in Russia, has been bought in America?

Mr. HILLMAN. It has been bought, and I am only sorry that they are not buying more here rather than buying elsewhere and not giving employment in this country.

Senator BARKLEY. In other words, what you did in the way of facilitating the purchase of machinery in this country was helping the American situation rather than the Russian situation?

Mr. HILLMAN. Of course, Senator.

Senator BLACK. You had started out to tell what your funds were used for, and I think that is very interesting. Was that the first joint unemployment insurance fund that was established in this country?

Mr. HILLMAN. It is the first to my recollection. I do not know of any other substantial fund.

Senator BLACK. It was established, if I am not mistaken, by joint contributions from the employers and employees?

Mr. HILLMAN. Yes, 1½ percent contributed by each one, making a total of 3 percent of the pay rolls.

Senator BLACK. Was that by a joint agreement between those who worked and the employer?

Mr. HILLMAN. Yes, Senator.

Senator BLACK. Did it work successfully?

Mr. HILLMAN. It has worked so successfully that we have paid out 7 million dollars in Chicago alone.

Senator COSTIGAN. Is that agreement still in effect?

Mr. STILLMAN. Still in effect. Now it is 4½ percent where the employers contribute 3 percent and the employees 1½ percent, and Senator, if American industry would have followed generally this line, we would have had from 6 to 10 billion dollars in reserves in 1929 and assuredly would have prevented this terrible disaster. I do not mean completely, but it probably would have kept us at the pace where Great Britain has gone down only 15 percent curtailment of production instead of 50 percent.

Senator HASTINGS. What were those percentages again?

Mr. HILLMAN. Fifteen percent in Great Britain——

Senator HASTINGS (interposing). No. Three percent paid by whom?

Mr. HILLMAN. The fund started with 1½ percent paid by the employers and 1½ percent by the workers.

Senator HASTINGS. How much?

Mr. HILLMAN. One and one-half percent by each, making 3 percent on the pay roll.

Senator HASTINGS. Now it is how much?

Mr. HILLMAN. Four and one-half percent, 3 percent by the employers and 1½ percent by the employees, and it was all done by voluntary agreement.

Senator BLACK. Who originally devised that plan?

Mr. HILLMAN. Our organization. In the convention in the city of Boston in 1920, we came out and laid out a program to find a way to relieve labor when they are out of work through no fault of their own.

Senator GERRY. How many days do you pay it?

Mr. HILLMAN. Of course, we are limited by our fund. I think we pay about 15 weeks a year. I am not sure, Senator, I do not know; but I think what we are paying is limited to 15 weeks, and to 40 percent of their pay roll.

Senator HASTINGS. What was the largest amount you ever had accumulated?

Mr. HILLMAN. In that fund in Chicago?

Senator HASTINGS. Yes.

Mr. HILLMAN. Several millions of dollars.

Senator HASTINGS. At any one time, what was the largest sum you ever had?

Mr. HILLMAN. I think a million and a half; I am not sure. I have not seen the figures for a long time.

Following up some of the other activities of our organization, we were the first organization which started cooperative housing in New York City, and we have provided housing for about a thousand families, decent housing, at much lower rentals than competitive rentals. The Amalgamated has had as its policy not merely a question of increasing wages, but to find any possible way to give service to our members, and in those other lines of services, we are not limiting them merely to our members. Any worker can come in and purchase a cooperative apartment in our cooperative housing.

Senator BARKLEY. Mr. Hillman, what proportion of the clothing manufactured in this country is manufactured by concerns where the employees are organized?

Mr. HILLMAN. My estimate right now would be about 80 percent. Probably close to 80 percent.

Senator BARKLEY. I have received 2 or 3 complaints from various factories making clothing in small towns of 10,000 or 15,000 people, that pressure has been brought through the operation of the N. R. A. to either compel organization of the employees in those factories or to produce a condition of competition that would make it impossible for them to operate. What is the attitude of the N. R. A. toward that?

Mr. HILLMAN. That statement is absolutely untrue. The code authority is operating to enforce fairly the labor provisions of the code, and that is one of the codes that has not got many other things but labor provisions.

Senator BARKLEY. That is, wages and hours?

Mr. HILLMAN. Wages and hours, and just a few sorts of fair trade practices that do not interfere with the free play of competition.

Senator BARKLEY. And has the N. R. A. or the code authorities or the codes themselves recognized the principle of the differential with respect to wages and hours depending upon the geographical location and conditions in the market and all of those things?

Mr. HILLMAN. They have geographically, the South and the North. In this code it is provided that the employers are required to maintain the differentials between the lower paid who have been brought up to the minimum of 40 cents an hour and those workers above the minimum.

A policy has been adopted by the code authority that if an establishment proves that they pay a fair labor cost and that they have local conditions that do not permit the people to earn as much as the others, that they are exempted from that clause. It has also been provided there as a matter of policy that if an employer, especially small employer, presents a case that he is financially unable to meet that situation, a recommendation to the administration is made for exemptions.

Let me say to you, Senator, that this group of people who are represented by this large association, do represent the small enterprises in our industry. They are spread all over the country. New York City alone is probably the place where the largest number of small business men operate in the industry, and when we speak of

New York City, I want you to know that a great deal of the work that is being cut in New York City and which is only 5 percent of the labor operation, is sent out to five States. New York supplies work in Massachusetts, to New Bedford, Worcester, Springfield; in Connecticut, to New London, Norwich, New Haven; Pennsylvania, something about 12 or 13 small places—Bethlehem, Easton, Bangor, Allentown, Scranton, Wilkes-Barre, and so on. New Jersey, probably 15 small towns—Perth Amboy, Jersey City, Newark, Red Bank, South Amboy. New York State: Poughkeepsie, Port Chester, Troy, and as far as New Bern, N. C. My estimate is that 400 workers employed in New Bern, N. C., from 300 to 400 workers, are supplied with work which has come from New York City.

Senator BARKLEY. You mean that the garments are made in New York City and shipped to these various points and made up and then shipped back to New York City?

Mr. HILLMAN. Yes, Senator. The trucking service has made that very very desirable.

Senator BARKLEY. Does that increase materially the ultimate cost to the consumer by reason of this shipping back and forth?

Mr. HILLMAN. No, Senator. It is very little when you get over the large item in a suit of clothes that sells from $10 to $25 or $30. An addition of 6 or 7 cents for truckage does not make sufficient difference.

And these are where the small people are employed, and the record, Senator, will show that the small people in the clothing industry have enjoyed protection only since the code has been in effect.

Let me give another item which will clear up some of the statements made by the small business man, and I am not saying that a number of these complaints are not correct. There is no question that there is some abuse by code authorities; no queston about it. They are human beings, they are selfish, and of course they abuse their power. Every one does that.

Senator BARKLEY. It is the business of the Government to prevent that.

Mr. HILLMAN. It is the business of the Government to prevent it, and the administration of N. R. A. is exercising all of its powers to prevent that situation, and they are doing well. Let us take the picture of the men in the clothing industry. Dun & Bradstreet give the position of the failures——

Senator KING (interposing). The position of what?

Mr. HILLMAN. The number of failures in the clothing industry, but they join it with men's furnishings, so I could not say that it is exactly the same number.

In 1932, there were 842 failures; in 1933, 298, and in 1934, 211.

Let us see from the actual figures of the clothing industry. The number of firms, classified by location, which have gone out of business during the 18 months since the effective date of the code.

Senator BARKLEY. What is the standard by which you judge a failure?

Mr. HILLMAN. That they have been in business and that they are out of business.

Senator BARKLEY. The closing or discontinuance of the factory?

Mr. HILLMAN. Yes.

Senator BARKLEY. Or going into bankruptcy.

Mr. HILLMAN. Going into bankruptcy, because if they reorganized again, of course——

Senator BARKLEY (interposing). It does not necessarily include any situation of just quitting?

Mr. HILLMAN. Of yes. What I am reading is the number of firms classified by location which have gone out of business.

Senator CLARK. Would that include a case of a man that had a factory that he simply could not operate, but still maintained the corporate organization and was ready to do business whenever he could?

Mr. HILLMAN. This would be the actual fact: If we take the number of plants in the country that have been in business 18 months ago, and have gone out of business today, that are no more there, it is 84. You will find that out of that 84, New York City supplies 64; Baltimore 2; Chicago 1—I am taking the large cities—Cleveland, Ohio, 1. These are all the big places. Denver, Colo., 1; Newark, N. J., 1. Only one place in West Virginia, Parkersburg, 1; which I would say is a definite small locality; Philadelphia, 6; Portland, Oreg., 2; St. Louis, 2.

Senator, I do not believe that this record can be disputed. If it is true for our major industries, it is the first time the small man is getting protection and support from the Government.

I do not think we are giving him sufficient protection. I think we can build up administrative machinery to give him more protection.

My faultfinding with the N. R. A. is that it is not sufficiently organized to give him additional protection, but I will say without question that I will challenge anyone to make good the statement that the small business man has suffered more than before N. R. A. It is also a complete misconception——

Senator BARKLEY (interposing). Do you mind putting that list in your testimony as part of the record?

Mr. HILLMAN. Yes. There is another thing which in my judgment is unfair to the small business man. People mix up chiselers and small business men. I will say to you that from my contact with the small business men, they are trying to do better for labor than some of the big chiselers the small business man who has not got the money to dismantle his plant and move it elsewhere where he can get cheaper labor. The big chiseler is underselling and putting out of business, at least in the industry that I am associated with, the small business men.

Through the group, the association that has been so much discussed, whose representative, Mr. Curlee, is right here representing himself, a very large business institution in the clothing industry, if not for N. R. A., the small business man would be completely driven out of business. And the big fellows, being able to drive their labor down to the very bottom, getting because of that the only volume of the production that was there, saw the opportunity to establish in the clothing business, which is a highly competitive business, a large aggregation of capital control.

Take away N. R. A. and the small business men will go out by the hundreds. The people who are pleading for the code in the clothing industry and suggesting a better method, with better labor provisions and a better code, are the small people.

The contractors' association have 800 small units. Probably the average employment there is 50 workers in a plant. They know that if you take away the N. R. A. protection from them, they are out. They are not afraid to compete with the large chiselers if the large chiselers will have to pay a decent wage. Some of the small people are more efficient than the large people. There is a preconceived notion that largeness means efficiency.

We know in the human being, that too much fat is a little hard on the heart, and too much fat in corporations destroys the heart completely. It becomes a heartless proposition. And these people see that it is within their grasp and within their reach, if the depression will go on for another 2 or 3 years, they will be in control and the small business man will have no chance.

The small business man has another problem. The small business man, as it was pointed out by—I do not recall who—yes, by Mr. Darrow yesterday. I will be fair to him—the small business man sells usually to the chain store.

Senator BARKLEY. Whom do you mean by the small business man?

Mr. HILLMAN. The small fellow.

Senator BARKLEY. The small manufacturer?

Mr. HILLMAN. He has no money to advertise to get national business through advertising.

Senator BARKLEY. You are not speaking of the retailer now?

Mr. HILLMAN. No; the small manufacturer. He has no money to send out salesmen on the road throughout the country as the big fellows do. So he goes out—I do not want to mention names—he sells to J. C. Penney; Montgomery Ward; Macy; Sears, Roebuck; and what they do is really to sell labor, and the pressure from these big people is always "get it cheaper." Today is the first time they can tell them, "We cannot get it cheaper, the Government will not permit us to do it."

And we also must not lose sight of the fact that 5 percent of chiselers who have no conscience—and they have demonstrated that, during the depression, they have no conscience and human values mean nothing to them—they start out underselling the rest of them, and the 95 percent must follow or go out of business, and you have that vicious circle.

One big chain store starts in selling a shirt for 27 cents, and what are the others to do? They must sell that shirt for 27 cents or 47 cents, or whatever it is. How do they do it? Crush labor.

And what is the ultimate cycle, Senator? The ultimate cycle is no consumption power, and all of these big plants close, and then we have the repetition of what has happened before.

I speak with a great deal of feeling when people criticize N. R. A., and I have criticized N. R. A.—I have criticized them for not doing so much—but there is one thing that we know, and that is that we have not the margin of hungry people. When I passed here today and saw the empty vacant lots, where there were hungry men in the thousands who had enlisted in the war and who came in here and were driven out as if they were enemies and invaders, almost burned up their lodgings, and then to say that we can sit back and just discuss general philosophies—well, Mr. Darrow does not know what happened in child labor either. We have the record of 125,000 children that were taken out through the N. R. A., out of the shops and

the factories, and if the record contains 125,000, there must be 200,000 more. And saying, you know, that nothing happens to wages, where there is the record that people have been put on wages so low that they could not buy even food for themselves, that they have to get Government relief, and then one wonders how far we can go ahead and discuss the constitutionality of a situation.

Take away the purchasing power as it was done until 1933, and in 1929 there were 11,000,000 families who had an income of less than $1,500 a year at the high of our prosperity. Our trouble is that we did not have enough purchasing power in 1929. If we would have had it, we would have a situation that we could cope with, and I say to you Senators—I may be wrong—but I am convinced that the N. R. A. is in the benefit of small and big business men if they have a long point of view.

Protection must be given to labor. Labor, too, is entitled to protection from Congress, and I find no fault with it. It is the first time in decades that Congress is concerning itself with the position of the men and women who have to work. Take that away from them, and what will happen? Unemployment of millions, reduction of wages, closing up of small business men, and ultimately dragging down the big fellows as well.

We are here in a situation even today, and I find no fault. I am here to testify for N. R. A. I have nothing to hide. The record of the Amalgamated, in my judgment, is a splendid record, but instead of permitting me to give what I believe is my honest opinion of the policies of the N. R. A. the question is, "Was I born in Russia or here?" As if I had anything to do with where I was born. At least I can say, Senator, that this country is not with me merely a matter of accident, but it is the country of my choice.

I believe that unless we do something—and N. R. A. has a great number of shortcomings, no matter who will administer it—our democratic institutions will go overboard. Talk about freedom! What freedom has the girl who is compelled to work for a dollar a week? What freedom has that girl? What freedom has the worker who is out of work and hopeless to find a job? Millions of people hopeless, and the first time getting hope since this new administration, and instead of supporting the policies of the administration we are finding fault, we are indulging in philosophical interpretations of what is the solution 200 years from now? Mr. Darrow can afford to wait 200 years, but the men and women out of work cannot afford to.

Hundreds of thousands of families have been broken up. I have seen people who were good people, putting away their savings, and who thought that they would carry their children through school, and then everything had to be thrown overboard; their savings gone, and the banks closed.

Gentlemen, I firmly believe that if N. R. A. is not continued if it is taken away and the sweatshops are given protection, I do not believe that there is a single financial institution that will be able to keep its doors open for the next 6 months. Take away from labor this protection, which is the large consuming power in the country; and what have you?

The sweatshops? The chiselers? They cannot eat more than three meals a day. What do they do with their money? Invest it. But the plants are shut up. And then what?

I am talking of the N. R. A. I was willing to do it in the most frank manner. I believe some of the things that had crept in in N. R. A., unless stopped by you gentlemen in Congress, may make of N. R. A. an instrumentality for an economy of scarcity instead of an economy of plenty, and I am opposed to that. The salvation of the country is a higher standard of living and not a lower standard of living, and at the same time I recognize when I come over and noted the textile industry, as I have known it, and I know that that industry is a sick industry, employing 500,000 workers in cotton, and over a million in all of its branches, I say that we cannot simply find fault with them because they are employers. It is our business to give them constructive help, give them constructive help against foreign competition. No matter what our abstract notions may be about free trade, they are worthless as a practical proposition in such a situation, and if the textile industry, seeing now the practical danger of being swamped with competition from Japan, and they have to go from one Federal institution to another, but there ought to be an institution, call it N. R. A. or call it anything, where a sick industry may be treated, because we cannot have a healthy country if an industry employing a million people, with all of their dependents, will just not be able to earn a decent living.

I am interested in that situation even if the textile industry is antiunion. I disagree with them, I am opposed to them, and to their position, but I say in spite of it all that industry, which is a major industry in our national economy, should be given protection.

I will be very glad to give in my record where I was born, what happened to me. My personal record, Senator, anything in my judgment will stand up with any good man in the country. I, too, had opportunities to make money, but I get a greater satisfaction when I find through the Cotton Garment Code Authority that 20,000 workers were put back to work. To me, to my personal selfishness, if you please, that is a greater compensation than getting a large bonus.

Senator BARKLEY. You spoke a moment ago about the philosophy of plenty as compared with the philosophy of scarcity. Do you mean by that that in an industry which has an unsalable surplus of goods in this country and for which there is no foreign market, where we have to decide whether to reduce the production for the purposes of the price standard of our own country or dump this unsalable surplus on the home market and driving down the price of the American worker or find some other market elsewhere in the world for that surplus, in that situation which end of the dilemma do you advocate?

Mr. HILLMAN. I say that it is our business to give the protection to industry right here. Let us not put ourselves at the mercy of some foreign country that can change their policies overnight.

Senator BARKLEY. That is not the question——

Mr. HILLMAN (interrupting). I would say, in that situation, that I would be for a temporary, orderly curtailment of production.

Senator BARKLEY. In other words, if we cannot sell a surplus that is produced by natural processes in this country, to other countries, and we do not need to consume it in this country, having established a market elsewhere for it, and thereby overproduced insofar as our domestic consumption may be concerned, in order to get rid of that unsalable surplus we have to dump it on our own markets and drive

our own prices down, in that situation, as a temporary relief, you would be in favor of an orderly curtailment of production until that unsalable surplus had been absorbed?

Mr. HILLMAN. Quite right. Because I believe there is a bottom when prices go down so low that is not in the interest of the consumer, because it is a price based on sweated labor, and labor is the major part of the consumers in the country.

Senator BLACK. Let me ask you one question. That assumes that it could not be sold in this market, which assumes either one of two things—either that the people do not want it or do not need it, or do not have the necessary income with which to buy. You said that you would favor a temporary curtailment. Of course, I think you will agree that the natural, and necessary, and most satisfactory method of approach would not be to curtail and thereby deprive the people of the things that they want and they need, but would be to try to make an effort to increase the income of the consumers of this Nation who work on the farms, and in the factories, and in the mines, and in the counting houses, so that we could not only produce but could consume.

Mr. HILLMAN. Senator, my answer to that is that these two things run along parallel lines.

Senator BLACK. Which should be first? To try to get added customers in this country and give them enough income to buy what we can actually produce, or should we first curtail production and keep them from buying so much?

Mr. HILLMAN. If you have a formula that would give us overnight a purchasing power higher than in 1929—it was not enough then—I would say, of course, let us not think of any temporary curtailment. Speaking realistically, I know that this kind of a program must take time, and I would say that we ought to follow a consistent program of raising the standard of living of the American people. Only in an emergency and only when it is proven beyond any possible doubt that that industry must have temporary relief should there be any curtailment, and the people to determine it must be a governmental agency and not the people in the industry.

Senator BLACK. That is right; I agree with you there. What you mean, however, is that you would only justify a curtailment as a last resort, after you had endeavored in every way possible to increase the income of the American people who want and need those things.

Mr. HILLMAN. Of course, Senator.

Senator BLACK. All right.

Mr. HILLMAN. Of course, Senator. And I believe that it is within the ingenuity of the American people to establsih an instrumentality that can work this out and not just let us drift into absolute and utter chaos.

Senator BARKLEY. To what extent, if at all—and I am asking this for the record and for information—to what extent, if at all, has there been any deliberate effort on the part of anybody connected with N. R. A. to freeze out small, independent industries in this country.

Mr. HILLMAN. When you say "N. R. A.", Senator, it is a very large institution. I believe that there are a group of people in N. R. A. imbued with as fine a public spirit as anywhere in the country, and they come from labor and they come from industry and they come from everywhere. There is no question that there are some people

who think of it merely in terms of a job, and I would say that we ought to find them quickly and dispense with these people.

The code authorities were not organized properly, in my judgment. I have urged a constitution of code authorities with labor representation and consumer representation. Unfortunately, that plea went unheeded in most instances, and, of course, if you take a code authority exclusively from management, you are bound to find some instances where those people, with a short-sighted policy, thought that they could corner the market, and, of course, they cannot. Unless we supply purchasing power, we are not going to make headway.

Senator BARKLEY. As I understand you, your attitude is that if there is any such element in official position in N. R. A. or any other governmental agency or position, then they ought to be eliminated?

Mr. HILLMAN. They ought to be removed as quickly as possible, without any 24-hour waiting period. This is no place for the chair warmers or people who have any selfish motive in the situation. I believe that we can find in the American people a group of people imbued with public service, who will administer this marvelous, ingenious development, so that we can think in terms of industry, so that we can think in terms of a national economy, and prevent our country from going into chaos and have men on horseback rushing us into something that will destroy future generations.

Senator CLARK. You said a little while ago that there were certain things in the N. R. A. as it exists at this time that tend to make for a philosophy of scarcity, which should be changed. What changes do you recommend?

Mr. HILLMAN. I will give you one, even if some industries claim they need it. I believe the prevention of the introduction of new machinery is a foolish policy. We ought to avail ourselves of new inventions, and when you give an industry, whether it is ice or anything else, the right to say, "We can keep out any new competitors from coming into the industry", and prevent that benefit that we get from free competition, we are just going to straddle the country with the inefficient industries. I would not—and I speak personally and just for myself—I would not tolerate that for a moment. I would say if there are any people who have got the ingenuity and have got the capital and can avail themselves of new machinery that the country is entitled to the benefit of that new invention, but I would say not at the expense of the exploitation of labor.

Senator CLARK. That is rather a matter of policy. What I was getting at is this: Are there any changes in the fundamental structure of the N. R. A. as it exists at the present that you think you would recommend to be changed?

Mr. HILLMAN. I would put in more public control. I do not believe that the country should be placed either in the control of industry or labor.

Senator CLARK. You mean more control by the N. R. A. as such over the code authorities as they exist at present?

Mr. HILLMAN. To make sure that the N. R. A. has as many as possible of able public servants, and I think we can find them. I know people who have given up their time and large incomes and worked hard, and these are the people that the chiselers are attacking.

Senator CLARK. That is something that cannot be regulated by law—the question of personnel. What I am trying to get at is, What

changes, if any, in the existing law you would recommend for the N. R. A. if it is continued?

Mr. HILLMAN. I would say that the administrative body of N. R. A. should be representative of all the elements that make up the public—the consumers, labor, and management.

Senator BARKLEY. In other words, you would have a larger proportion of the men actually administering the N. R. A. with a detached viewpoint, rather than the viewpoint simply of their local or their industrial situation?

Mr. HILLMAN. Yes, Senator.

Senator KING. Is it not a fact that the representatives of the consumers' organizations made many, many protests against the codes and their enforcement?

Mr. HILLMAN. Of course, Senator, but when you speak——

Senator KING (interrupting). Just a minute. And with a view to eliminating some of the evils to which you have referred, and many other evils which have existed?

Mr. HILLMAN. Yes, Senator. But may I complete my statement? I have given you a direct answer, but may I complete my statement?

Senator KING. Yes.

Mr. HILLMAN. Unfortunately—and I am closer to the consumer side than any of the other groups—too many of the consumer group had such highly theoretical notions of things, things that we should look forward to in the next 25 years, which they wanted changed overnight. If we would put in their theories, the whole thing would break down, because we have not yet the agencies to administer it in a perfect manner.

Senator KING. I have read many of their statements, and they seem to me to be realists rather than theorists. I want to ask you a few questions before we adjourn.

Mr. HILLMAN. I would like to make a statement on the service industries, disagreeing with my friend Mr. Richberg. I would like to make sure that I am given the opportunity.

Senator KING. Do you mean you want to make another statement?

Mr. HILLMAN. As to the service industries. Mr. Richberg, if I understood correctly, said that the service industries may be eliminated.

I believe it will be the gravest error if we do it. There are from three to five million people engaged in the service industries, and the technological improvements in industry, where you will find that less and less people are employed in industry from year to year producing more and more goods, mean that we must look for the absorption of our unemployed more and more to the service industries. If you eliminate the protection for three to five million American families who are the most underpaid, and who for the first time since the N. R. A. have seen 1 day's rest out of 7, I would say that first of all it is not the right thing not to give them that protection, and the next thing I believe that we would interfere with creating purchasing power for the country. It would be, in my judgment, a heartless and unsound thing to do, and I want to register my most emphatic disagreement with Mr. Richberg about even suggesting that possibility.

The only good thing that I could see about it, when Mr. Richberg raised the issue is, that Congress should have an opportunity to consider it. I believe Congress ought to set up a number of standards.

In the first place, we just went off with a very loosely and hastily drawn law because of the emergency. I believe whether it is N. R. A. or any other administrative agency, there should be definite limitations by Congress to tell the agency what to do and what not to do.

I believe that the service codes should be considered, and I want to make the most urgent plea for them on a basis of humanity and in order to be able to actually create purchasing power in the country, not to withdraw the protection of the labor provisions from these three to five million workers.

Senator KING. Can you answer a few questions now?

Mr. HILLMAN. Of course, Senator.

Senator KING. If you will answer them briefly, we will rush along.

Mr. HILLMAN. I will try to do it.

Senator KING. How many of the men's clothing code authorities are residents of Chicago, New York, Rochester, and Philadelphia?

Mr. HILLMAN. From New York, I believe there are two or three. From Philadelphia, one or two.

Senator CLARK. How many members are there on the code authority?

Mr. HILLMAN. Twenty-four. The representatives to my recollection are from Cincinnati, Cleveland, Chicago, Philadelphia, Rochester, Knoxville, Tenn. I may have left out one or two, but it is very representative.

And I will say this, Senator, that the men's clothing code authority has pleaded with the representatives of the other organization inviting time and again, to my information, Mr. Curlee to come on the code authority and be responsible for the administration, instead of staying outside and just throwing—well, mostly bricks and very little bouquets.

Senator KING. Are there clothing manufacturers throughout the country who have never subscribed to the code subject to the provisions of it?

Mr. HILLMAN. Of course.

Senator KING. What body exercises supervisory power over the members of the industry who have not subscribed to the code?

Mr. HILLMAN. The code authority.

Senator KING. What is the method of disciplining manufacturers who have not subscribed to the code authority?

Mr. HILLMAN. Giving them an opportunity to state their case in every instance, then referring the recommendation to the deputy administrator and the compliance division.

Senator KING. Those who are under the code are the judge and the jury of those who are outside of the code.

Mr. HILLMAN. No, pardon me. I say that they are merely presenting their case to the deputy administrator and to the compliance division. I do not know—I may be wrong, but I do not know of any case where the Men's Clothing Code Authority on its own power initiate disciplinary measures on any member of the industry It was a governmental agency that did it. They have simply presented the evidence.

Senator KING. Does the code require that every garment produced and sold must have affixed to it, the N. R. A. label?

Mr. HILLMAN. Yes.

Senator KING. Do the retail codes prohibit the sale by retailers of garments that do not have the label affixed?

Mr. HILLMAN. Yes, Senator.

Senator KING. What is the annual budget of the Code Authority?

Mr. HILLMAN. I think something like a quarter of a million dollars.

Senator KING. How is it collected?

Mr. HILLMAN. Through the sale of the label.

Senator BARKLEY. Through the sale of what?

Mr. HILLMAN. The label.

Senator KING. Who levies the assessment?

Mr. HILLMAN. The code authority. The members of the industry levy on themselves because they all pay.

Senator KING. Those who were not members of the code too?

Mr. HILLMAN. Under the law, they are all members to the code of fair trade practices in effect.

Senator KING. But those who have not come under the code are compelled to pay just the same as those who are under the code?

Mr. HILLMAN. They are all under the code.

Senator KING. Those who have not come into your organization. Put it that way.

Mr. HILLMAN. If they are in the industry, they are subject to the code. They are subject to the law.

Senator KING. Whether they want to or not?

Mr. HILLMAN. Of course. In any law we do not permit some people to say, "We can go ahead and put the other fellow out of business because I do not accept the law."

Senator KING. Then you interpret the law as compulsory upon those who have not accepted it?

Mr. HILLMAN. Of course, Senator. How else could we enforce codes?

Senator KING. I do not want to argue. I am just getting your view.

Mr. HILLMAN. I think I am making my statement rather brief.

Senator KING. Not very brief.

Mr. HILLMAN. I am sorry.

Senator KING. What salary do you get as a labor member?

Mr. HILLMAN. From where?

Senator KING. From the organization.

Mr. HILLMAN. I am only drawing a salary from my own organization. My salary is $7,500 minus a 15 percent reduction.

Senator KING. Who is the head of the labor code representing——

Mr. HILLMAN (interposing). There is no labor code; there is a code. In this case, Mr. Morris Greenberg, the director of the code authority.

Senator KING. Where does he live?

Mr. HILLMAN. He lives in New York City now.

Senator KING. What salary does he get?

Mr. HILLMAN. $10,000.

Senator KING. What other officials, administering the code are compensated from that quarter of a million dollars?

Mr. HILLMAN. All of the people who investigate, who collect the information, who are in the service of the code authority.

Senator KING. Is that the highest salary paid?

Mr. HILLMAN. I think that the counsel gets $1,000 a month.

Senator KING. Who is the counsel?
Mr. HILLMAN. Mr. Drechsler.
Senator KING. He was here at the meeting on May 21, 1933, was he not?
Mr. HILLMAN. Yes, sir.
Senator KING. And formulated the code when that 25 people were present?
Mr. HILLMAN. He helped to formulate the code, and the record will show——
Senator KING (interposing). I just asked you if he was there.
Mr. HILLMAN. When you say, Senator, that he formulated, I do not think it is quite in accordance with the facts.
Senator BARKLEY. These salaries are salaries paid by your organization?
Mr. HILLMAN. No; by the code authority.
Senator BARKLEY. Not by the Government.
Mr. HILLMAN. By the code authority. The code authority collects its income from the sale of labels.
Senator BARKLEY. But it is not paid out of the Treasury of the United States?
Mr. HILLMAN. No, sir.
Senator CLARK. Did I understand, Mr. Hillman—I am not quite clear on it at all—did I understand that the code authority does levy assessments on the concerns in the industry?
Mr. HILLMAN. No. The code requires, as part of the enforcement agency, and a very good enforcement agency, that each garment must have a label of N. R. A. to tell the consumer that this garment was manufactured under the fair-labor provisions as provided by the code.
Senator CLARK. What I am trying to find out is whether there is a further assessment?
Mr. HILLMAN. No; I think they pay $5 a thousand for the men's clothing, and $2 or $3 a thousand for separate trousers, for labels.
Senator CLARK. What do you do when anybody puts out clothes without buying labels?
Mr. HILLMAN. We would consider he violated the code.
Senator CLARK. What do you do in a case like that?
Mr. HILLMAN. The code authority brings him up before the committee, and in every case I believe the man says, "I am sorry, I will pay you back for the amount of the labels."
Senator CLARK. So that is your method of raising the revenue instead of levying assessments as some code authorities do?
Mr. HILLMAN. There are no assessments. And each manufacturer pays exactly in the same proportion. If he is a large manufacturer he pays more because he uses more labels. A small manufacturer may pay $10 a year if he only manufactures 2,000 garments. It is the fairest distribution.
Senator KING If a person manufactures garments and has not the label upon them, he cannot sell them; is that not the result?
Mr. HILLMAN. He can, but he is in violation of the code.
Senator KING. Then he will be disciplined?
Mr. HILLMAN. He ought to be disciplined, of course.
Senator KING. I am not asking what ought to be done.
Mr. HILLMAN. Of course.

Senator KING. And discipline might mean indictment?

Mr. HILLMAN. There has not been a single indictment.

Senator KING. It might be?

Mr. HILLMAN. Good common sense, if exercised by the code authority, will be for not going into indictments, but rather to look for cooperation and use the penalty only with the worse kind of chiselers.

Senator KING. You know that a great many persons have been prosecuted and fined and some indicted.

Mr. HILLMAN. Yes; I know.

Senator KING. Under the same sort of a code.

Mr. HILLMAN. Not for labels.

Senator KING. I am not speaking of labels.

Mr. HILLMAN. For paying wages below those as provided in the code.

Senator KING. For various reasons that have been denominated as violative of the code?

Mr. HILLMAN. Yes.

Senator KING. How do you determine whether there has been violation of the code?

Mr. HILLMAN. If a complaint is filed by labor or workers that they are not getting the proper wage, an investigator is sent to see if that statement is correct.

Senator KING. Or whether a man has the label?

Mr. HILLMAN. The label itself?

Senator KING. Yes. If he attempted to sell without the label.

Mr. HILLMAN. Only if it would come to the attention of someone.

Senator KING. Do you have investigators up and down through the country?

Mr. HILLMAN. Yes.

Senator KING. How many?

Mr. HILLMAN. I am not in charge; I could not say. Possibly about 30 or 40; that would be my estimate.

Senator BARKLEY. The Compliance Division of the N. R. A. has a compliance director in each State?

Mr. HILLMAN. Yes.

Senator BARKLEY. Under that compliance director, there are investigators and adjusters appointed who are subject primarily, I suppose, to the authority of the State director?

Mr. HILLMAN. Yes.

Senator BARKLEY. And ultimately are subject to the authority of the headquarters of the chief compliance officer, who I believe is called a "director" here in Washington. They are supposed to go around wherever there are complaints and make a personal investigation and get the complainants together in an effort to adjust the difference and iron it out and settle it without resort to prosecution or any sort of legal process, is that true?

Mr. HILLMAN. Yes, Senator. But in many industries the Compliance Division now is giving responsibility to the code authority, and it is only done if the code authority is qualified, in the judgment of N. R. A., as a proper party, to save the United States Government from all of these expenses.

Senator BARKLEY. In other words then, the code authority undertakes to settle the difficulties first?

Mr. HILLMAN. Yes, sir.

Senator BARKLEY. And upon their failure, then the Compliance Department steps in?

Mr. HILLMAN. Most of the complaints are settled that way, and if they are not settled that way, then they try to bring them together through the deputy administrator in the Compliance Division.

It is a very unfair thing, because of some few incidents happening here and there, to think of N. R. A. as a bunch of nightriders. Most of these people have good common sense, they want to bring about a compromise, to bring agreement.

Senator CLARK. What happens in a case like this? Suppose the A garment company is manufacturing garments and does not use the label, and it comes to the attention of the code authority. What is the next step?

Mr. HILLMAN. They are called in and told, "You are violating the code" and I believe in a very few instances——

Senator CLARK. I am not asking you that.

Mr. HILLMAN. That is the only thing that happens.

Senator CLARK. Suppose a man said, "No; I do not want to use the labels, I do not think you have any right to make me do it."

Mr. HILLMAN. We would present him to the compliance division.

Senator CLARK. And you would consider that he had committed a crime by making cotton garments without the label?

Mr. HILLMAN. Of not paying the taxes.

Senator CLARK. He would be subject to indictment.

Mr. HILLMAN. If you carried the law all the way through.

Senator CLARK. Assuming that the company was adamant and refused to go through, and the code authority decided to go to the limit, you would consider that that concern had committed an indictable offense by refusing to carry out the provision of the code in not buying the labels?

Mr. HILLMAN. Yes.

Senator BARKLEY. The law provides that these matters may be submitted to the United States district attorney in every district?

Mr. HILLMAN. Yes.

Senator BARKLEY. Which of course presupposes possible prosecution?

Mr. HILLMAN. Yes. But always we want to look and see how these code authorities act. As a matter of fact, they never went for indictments.

Senator CLARK. What I had in mind, Mr. Hillman, was certain letters that had been sent to me, not on that particular code but on other code authorities, in which they said, "This is the third notice, and you will be prosecuted unless you send in the assessment." That was not in the label industry.

Mr. HILLMAN. That is another method of negotiation, Senator, of just telling him that, so that he comes around and so that we do not have to go around and do it.

Senator CLARK. You mean it is a pleasant negotiation to say, "You are guilty of violating the law and we will have you indicted."

Mr. HILLMAN. A landlord says to a tenant, "If you do not pay your rent, I will put you out." He has no intention of putting him out, but he thinks that if he makes the threat the man will come around and make a decent settlement.

Senator CLARK. That is all.

The CHAIRMAN. We will recess now until 10 o'clock tomorrow morning, at which time we will hear Mr. Curlee.

(Whereupon at 1 o'clock noon, an adjournment was taken until Friday, Mar. 22 at 10 a. m.)

(The following data was submitted in connection with Mr. Hillman's testimony.)

Number of firms classified by location which have gone out of business during the 18 months since the effective date of the code

Baltimore, Md	2	Parkersburg, W. Va	1
Chicago, Ill	1	Philadelphia, Pa	6
Cleveland, Ohio	1	Portland, Oreg	1
Denver, Colo	1	St. Louis, Mo	2
Los Angeles, Calif	3	Utica, N. Y	1
Newark, N. J	1		
New York City	64	Total	84

In 1932, Dun & Bradstreet reports to us that the number of failures among manufacturers of clothing and furnishings was 840.

1933	298
1934	211

Firms manufacturing men's clothing

Location	Manufacturing	Contracting	Location	Manufacturing	Contracting
California:			Iowa:		
Hollywood	2		Davenport	1	
Long Beach	1	7	Des Moines	1	
Los Angeles	39	34	Kentucky:		
San Bernardino		1	Covington	2	
San Francisco	12	6	Lexington	1	
San Pedro		1	Louisville	2	1
Vallejo	1		Mayfield	1	
Westwood		1	Newport	1	
Colorado: Denver	3		Paducah	1	
Connecticut:			Shelbyville	1	
Middletown	1		Louisiana: New Orleans	14	3
New Haven	2	1	Maine:		
New London	1		Brewer	1	
Norwich	1		Portland	1	
Waterbury	1		Rockland	1	1
District of Columbia: Washington	2	2	Sanford	1	
Georgia:			Maryland:		
Bremen	1		Baltimore	116	202
Columbus	1		Crisfield	1	
Rome	2		Edgemere		1
Winder	1		Emmitsburg		1
Illinois:			Fallston		1
Aurora	1		Frederick	1	
Berwyn		1	Hempstead		1
Chicago	128	129	Manchester		1
Coal City	1	2	Thurmont		1
Jacksonville	2		Union Bridge		1
Joliet	1		Westminster	2	
Mount Carmel	1		Michigan:		
Quincy	1		Detroit	2	6
Streeter	1		Hillsdale	2	
Toluca	1		Minnesota:		
Indiana:			Minneapolis	5	6
Evansville	1		St. Paul	5	3
Fort Wayne	1		Missouri:		
Indianapolis	1		Kansas City		1
New Albany	1		Springfield	1	
Rising Sun		1	St. Louis	15	10
			Nebraska: Omaha	1	

Firms manufacturing men's clothing—Continued

Location	Manufacturing	Contracting
New Hampshire: Newport	2	
North Carolina: New Bern	1	
New Jersey:		
Bayonne		1
Camden		2
Carteret		1
Clifton		4
Egg Harbor		3
Egg Harbor City		3
Elizabeth		6
Garfield		8
Hackensack	1	
Hammonton	3	1
Hoboken		1
Irvington		2
Jersey City	3	2
Jonesburg		1
Linden		1
Lodi		2
Maple Shade		1
Minetola		4
Mizpah		1
Newark	12	59
New Brunswick	3	1
Nonna		1
Passaic	2	10
Paterson		2
Paulsboro		1
Perth Amboy		5
Plainfield	1	3
Rahway		1
Ranton		1
Red Bank	1	5
Riverside		1
Roselle		1
South Amboy		2
South River		1
Trenton	3	3
Union City		1
Vineland	1	14
West Berlin		1
Woodbine	2	1
Ohio:		
Bethel	1	
Cincinnati	37	21
Cleveland	16	6
Coal City	1	
Columbus	2	2
Galion	2	
Greenville		1
Lorain	1	
Mount Healthy	4	3
Oklahoma: Oklahoma City	1	
Oregon:		
Oregon City	1	
Portland	5	
Pennsylvania:		
Allentown	3	
Bally		1
Bangor	1	2
Bedminister	1	
Blooming Glen		1
Bridgeport		1
Pennsylvania—Continued.		
Chambersburg		1
Coopersburg		1
Dillsburg	1	
Doylestown	1	
Dublin		1
Easton	2	6
Everett	1	
Hatfield	2	
Kulpsville	1	
Lansdale	1	2
Levanon	1	
Line Lexington		1
Milford Square		1
Morristown		1
Mt. Union	1	
Norristown		1
Northampton		1
Pen Argyl		1
Pennsburg	2	1
Perkasie	1	1
Philadelphia	123	139
Pipersville	1	
Pittsburgh		1
Pittston		1
Quaker Town	4	1
Reading		2
Red Hill	1	
Sassamansville	1	
Scranton	1	2
Sellersville		1
Silverdale	1	
Souderton	4	2
Stewartstown	1	
Sunnytown	1	
Telford	1	
Trumbauersville		1
Tylersport	1	
Vernfield	1	
Waynesboro	1	
Wilkes-Barre	1	
Rhode Island: Pawtucket	1	
Tennessee:		
Chattanooga	1	
Cleveland	1	
Knoxville	3	
Milan	1	
Nashville	1	
Texas:		
Dallas	2	
Houston	1	
Virginia:		
Fredericksburg	1	1
Norfolk	1	
Richmond	1	
Staunton	1	
Washington: Seattle	2	1
Wisconsin:		
Kenosha	1	
Milwaukee	9	6
Sheboygan	1	
Wisconsin Rapids	2	

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 79

A RESOLUTION FOR AN INVESTIGATION OF CERTAIN CHARGES CONCERNING THE ADMINISTRATION OF INDUSTRIAL CODES BY THE NATIONAL RECOVERY ADMINISTRATION

PART 3

MARCH 22, 25, 26, 27, 28, 29, AND 30, 1935

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INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

FRIDAY, MARCH 22, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Gore, Costigan, Clark, Byrd, Black, Gerry, Couzens, Keyes, La Follette, and Capper.

The CHAIRMAN. The committee will come to order. Senator King desires to read several items into the record, and we will do that before we start with Mr. Curlee.

Senator KING. I started to read into the record a few days ago, excerpts from the report of the Federal Trade Commission to the President of the United States in response to Executive order of May 30, 1934, with respect to the basing point system in the steel industry. That report was submitted in due season and it contains some conclusions and recommendations which I desire to put into the record.

I will not read all, but will read the recommendations.

A

The Commission is profoundly of the opinion that there is no sound economic foundation in a system of price fixing, whether it results from the cooperative activities of industry or whether it be imposed upon industry by governmental action.

Men who have invested their lives and fortunes in the manufacture and sale of goods should not, in view of the public interest, be entrusted with the responsibility of fixing prices. They will generally act with an eye to dividends rather than to the public welfare. This is no arraignment of the integrity of those who conduct business but is a recognition of their humanity, and of the soundness of the principle which underlies every judicial system, namely, that personally interested parties shall not be presumed to have unbiased minds.

Moreover, there is the difficulty of enforcement. If business assumes the responsibility of cutting off supplies, boycotting or otherwise penalizing those who fail to adhere to the price system or to the prices which that system is the means of unifying, business to that extent employs selfish practices not conducive to the public interest. The use of such methods would be to regulate prices by the use of force exercised by men who are responsible neither to the people nor to the Government and who have their own personal ends to serve. Industry must perforce come to the Government for the enforcement of its own edicts and the signs that this is the inevitable outcome are abundant.

The Government cannot afford to enforce a code for one industry and refuse the responsibility of enforcing all codes for all industries.

If the Government were to police prices as fixed by industries, it would necessarily undertake to ascertain whether each industry's price schedule were fair and in the public interest. The magnitude and difficulty of such an undertaking

requires no comment. And yet, we respectfully submit, such an undertaking eventually is implicit in the substitution in the steel industry of price fixing for prices resulting from price competition under the law of supply and demand.

The question, therefore, must be broadly considered. Thus considered, it means that in interstate commerce the Government would undertake the responsibility of seeing that prices, as set by each industry, are not cut by any member of the trade, or that those guilty of cutting are called to account. Moreover, the official supervision over the reasonableness of prices is a kaleidoscopic task; "the power to fix prices, whether reasonably exercised or not, involved power to control the market and to fix arbitrary and unreasonable prices. The reasonable price fixed today may, through economic and business changes, become the unreasonable price of tomorrow" (273 U. S. 393, 397).

The character of the resulting financial and political strain need not be described. Nor is even this the principal difficulty.

It would be more difficult to enforce price fixing than it was to enforce prohibition. In our opinion there was at first a much stronger public sentiment for prohibition than there is for price fixing. The sentiment against prohibition grew with the inability or indisposition to enforce the prohibition laws, and on account of the unlawful liquor traffic and attendant vices consequent upon nonenforcement. No law can be effectively enforced in the absence of a preponderant public sentiment in favor of it.

It is easier to prohibit the manufacture, sale, transportation, or possession of a commodity than it is to permit the same of a commodity at less than a given price. It is not possible by inspection to ascertain whether a shipment of steel or food products, for example, was sold at a prescribed price, as would be possible, by the momentary use of the senses, to ascertain that a consignment was intoxicating liquor.

In a memorandum presented to the resolutions committee of each major party in 1932 by 127 economists affiliated with 43 institutions of learning in 24 States in all parts of the country, the following appears:

"The undersigned as independent students of the subject believe that the weakening of the Sherman Antitrust Act would involve consequences of a radical nature, inconsistent with the very principles of private industry. The widening and extension of the realm of public price fixing in industry and commerce resulting from such action must impose an impossible burden upon governmental agencies of control and irreparable injury to the political and social, as well as economic, interests of the whole people."

The economists offered their suggestions as to principles to be embodied in a platform, in part thus:

"3. Rejection of the assertion made by those seeking to break down the Sherman Act, that it makes necessary the development of excessive capacity and wasteful overproduction, and the equally false assertion that this was one of the causes of the present industrial depression. On the contrary, the most competent economic opinion, as well in Europe as in this country, can be cited in support of the view that a strong contributing cause of the unparalleled severity of the present depression was the greatly increased extent of monopolistic control of commodity prices which stimulated financial speculation in the security markets. There is growing doubt whether the capitalistic system, whose basic assumption is free markets and a free price system, can continue to work with an ever-widening range of prices fixed or manipulated by monopolies" (Am. Econ. Rev., September 1932, p. 465).

We believe that the views of the economists above quoted, are sound. The memorandum will be found set forth in full in appendix G hereof. There is no substitute for price competition as a regulator of prices. It should be noted that inefficiency is fostered by price fixing not only among small units but also, and perhaps even more notably so, among huge amalgamations. Numerous economic studies have shown that the moderate sized independent unit has as low, and often lower, unit costs than the paramount unit in a given industry and, given protection against the unfair employment of great resources by its huge competitors, can fully hold its own on the market.

We respectfully submit that unless our institutions are to be fundamentally changed, industry and the administration must face the problem of a return to price competition rather than the perpetuation and legalization of price combinations.

We believe that the road toward true recovery is not in the direction of the multiple basing-point system or other price-fixing methods but is in that of the restoration of industry to a condition of sound and fair competition, and that unfair methods of competition shall be vigorously proceeded against.

We are in whole-hearted accord with the laudable desire to increase employment, to insure adequate wages, to prevent excessive hours and child labor, and to otherwise improve the conditions of employees. However, we are of the opinion that labor problems and unfair methods of competition can best be dealt with separately and independently. To the same effect we respectfully refer to the plan recently submitted to the National Industrial Recovery Board by Mr. William H. Davis, former compliance director of the N. R. A. and now special adviser to N. I. R. B. A copy of his report will be found in appendix H. Reference is also made to a similar position taken recently by the committee appointed by the National Association of Manufacturers to study and report upon those questions.

Senator KING. There are some other parts of this report which I shall hand the reporter for insertion in the record.

(By direction of Senator King, the following portions of the report referred to are inserted, as follows:)

D

The final possible recommendation to be considered is that the code be so amended as to eliminate Executive sanction of the basing-point system in the industry and leave it open to legal attack on the ground that it violates the antitrust laws. If express sanction of the system be eliminated from the code, it is, of course, excluded from protection under the following provision of the N. I. R. A.:

While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for 60 days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States (sec. 5).

If the suggested action were taken it would be again open to the Department of Justice or this Commission, if the facts warranted, to go forward in formal proceeding to test the basing-point system under the Sherman Act or the Federal Trade Commission Act. Whereupon the ultimate decision would rest upon judicial determination.

Pursuant to the Executive order and in harmony with our views as set forth in this report, we respectfully recommend that the amended code be changed to eliminate provisions falling within the following classifications:

(a) Provisions giving express sanction to the multiple basing-point system;
(b) Provisions in aid of price fixing; and
(c) Provisions relating to regulation of production and new capacity.

If the President desires more specific information of the precise sections and parts of sections which in the opinion of the Commission should be deleted and the text of amendatory phraseology, we shall be glad to submit proposed amendments in detail and without delay.

By direction of the Commission.

GARLAND S. FERGUSON, JR.,
Chairman.

CHANGES IN BASING POINTS UNDER AMENDED CODE

The more important products had relatively few basing points. Thus, treating Pacific coast and Gulf ports each as one base, sheets had only 4 basing points, plates only 8, structural shapes only 7, pipe only 3, tin plate only 3, boiler tubes only 1, wire nails and wire only 8, hot-rolled strip only 2, cold-rolled strip only 3, rolled-steel car wheels only 2, tube rounds only 5, axles rolled or forged only 3, tool-steel bars only 3, merchant-steel bars only 8. The above products comprehend an overwhelming percentage of the total output of all kinds of steel products, and many of them are readily recognizable as forms which constitute the raw material for a host of fabricating industries as well as consumer goods.

Now, what changes in basing points have been made by the amended code as to the above products? Treating Gulf and Pacific ports each as 1 base, the answer is none except that 1 additional basing point was provided for on hot-rolled strip and that 2 additional basing points were added for merchant-steel bars, 1 of these being only for bars made from rerolled rail steel. In other words, the 60 basing points for these dominating products as set up in the original code have been increased by only 3 in the amended code. Gulf port basings were enlarged

to include 2 additional ports and Pacific coast port basings to include 5 additional ports. Among the foreging products this change applies only to merchant bars, plates, sheets, structural shapes, tinplate, wire nails, and wire. An important consideration as to the Pacific coast basing points is that on some products base prices applicable thereto are merely the sum of eastern basing-point prices plus delivery charges from eastern basing points to Pacific coast ports. These ports, therefore, are not independent basing points. With these qualifications it is apparent that the basing-point system on the products named is practically what it was before the code was amended.

Conclusions and Recommendations

CONCLUSIONS

Before there can be an consistent determination of public policy regarding price fixing by organized groups of competitors, the factual issue must be faced whether there is price fixing. So long as the idea is entertained that the factual condition may be an expression of competition rather than of a price-fixing combination, there can be no logical treatment of that condition. In economics, as in medicine, diagnosis is fundamental. The diagnosis which the Commission makes is that the basing-point system not only permits and encourages price fixing, but that it is price fixing.

It is price fixing so absolute that purchasing agencies of the Federal Government are reduced to a position of such helplessness that they literally place each bid in a separate capsule, shake them up and draw one out of a hat. It is price fixing so rigid that violations of the delivered price are actually penalized at the rate of $10 per ton even on sales to the Federal Government, while fines have been assessed on sales of as little as a fraction of a ton. It is price fixing so self-centered that as the Commission pointed out in its former report, the advantages bestowed by nature on particular sections or communities have been nullified.

Not only that, but the immense sums invested by Government in improving the gifts of nature and by private industry in the faith that natural advantages and their improvements would accrue to the benefit of the buyers, fabricators, and consumers of steel as well as the producers, have been in effect largely appropriated by the producers. The basing-point system with its supporting formula in essence withholds the gifts of nature from the consuming classes and monopolizes them in the hands of the producers and sellers of iron and steel. Only aims of a blindly selfish character can account for the arbitrary abnormalities and flagrant fictions which are inherent in this basing-point system.

The necessary implication of statements by leaders of the industry is that the basing-point system in steel is a price-fixing system. As an instrument of price fixing, it has the sanction of the code whose provisions make its operation more definite and certain without in any degree lessening its inequities. The inequities of the system, whether for producer, fabricator, or consumer, arise fundamentally out of this fact, that it depends upon artificial and wholly arbitrary arrangements in the making of price, rather than upon competition automatically and impersonally working out into a price accurately reflecting a balancing of supply and demand forces.

The inequities of the system for the producer of steel lie in the fact that except for a few powerful interests in the steel industry the producer has little to say under the system as to whether his mill shall or shall not be a basing-point mill, as to what the price at his mill shall be, or as to what shall be the differential between the price at his mill and that of any other mill. Mill prices of the individual producer therefore may be totally unrelated to his own costs and to the several market factors which, under competition, would determine price.

The price differential of two steel basing points may remain, and in some notable instances has remained, constant for many years during which the prices themselves change. Yet it is inconceivable that all the price-making factors affecting the prices of two widely separated points, if permitted to operate without artificial restraint, would continue in such a balanced relationship as to preserve a constant differential over a period of years. Nor would it be possible under any price-fixing system to discover and maintain a parity between such points that would reflect the constantly changing relationship of supply and demand factors. If this be true it follows that price fixing must of necessity bear unequally and not in accordance with natural causes on producers differently located.

For the fabricator of steel, other than that used in an identified structure, the inequities of the system arise, in part, from the artificial disparity of basing-point prices for steel on which competing fabricators must base the prices at which they buy. Such a fabricator, unless located at the basing point governing the delivered prices of the territory in which he wishes to sell, is at a marked disadvantage in competition for the business of that territory (except as to his own local point) with a fabricator located at such basing point, even though the first fabricator be at or near a producing point and even though he be freightwise nearer to the points of delivery than the second. Moreover, the parity of basing-point prices making the delivered prices of adjoining territory determines, other things equal, the extent of the territory in which one fabricator located at or near one basing point has a competitive advantage over another fabricator located at nor near the other basing point. Consequently inequities for such fabricators must inevitably result from any arbitrary dictum that makes one producing point a basing point and another a nonbasing point or that artificially fixes the differential between basing-point prices.

Furthermore, gross inequities for fabricators of steel, likewise caused by the artificialities of the basing-point system in steel, result from the quantity extras, increase in some of which has been very pronounced under the code. These extras seem to bear no proper relation to the differences in costs of handling and selling and become an unfair burden on the small fabricator in competition with the large.

The inequities of the basing-point system in steel for the consumer are principally a matter of effects on the consumer's price level. The system's artificialities find expression in the rolling of steel at relatively uneconomic points of production and therefore in high producing costs; in excessive cross freighting and therefore in high delivery costs. These several unnecessary costs, occasioned by the use of the system, are reflected in the price of the product already swollen to protect the producer having a heavy overhead, out-of-date equipment, inefficient management, or exclusively all-rail transportation as against the water or other low-cost transportation of a rival concern. As the semifinished product passes through the channels of fabrication and distribution its price is pyramided by percentage margins on the unnecessary as well as necessary cost and profit elements and finally emerges to plague the consumer in a price level which he can with difficulty meet and which consequently retards the producer's operations. Moreover, the inequity is not for the consumer of steel alone but for consumers and producers of every kind of commodity, in that national recovery is delayed through high consumer prices caused by artificially high production and distribution costs and profits.

Generally speaking, when a price-fixing combination is successful in raising prices, consumption will decrease. The process of holding for a fixed price in the face of decreasing consumption means reduced employment and reduced income for labor. If consumption continues to decrease, a price-fixing system calls for still higher prices in order to protect profits and thus a new cycle of reduced consumption is initiated.

It is a most significant fact that the steel industry was able to show satisfactory profits for the first 6 months of 1934 without operating to more than half its producing capacity. Profits under such conditions necessarily involve prices per ton which include a high margin over cost of production. It is theoretically possible to fix prices at a point where profits would be shown on a much smaller percentage of capacity. The consuming public would doubtless revolt against the exaction of prices that would provide a profit on an investment of which only a minor percentage is being used. It has borne more or less patiently the burden of prices which provided a profit on an investment of which only 50 percent was used. Recent trade-press reports state that some of the younger and stronger independent producers of steel are now contending for a drastic reduction in prices on the theory that it is better business to have a high volume of production on a reduced margin of profit than a small output at a high price. Such a position is constant with the views of the Commission above expressed and with any logical long-run view of economic recovery.

The situation involves social and economic consequences of far-reaching and fundamental import. If the capitalistic system does not function as a competitive economy there will be increasing question whether it can or should endure. The real friends of capitalism are those who insist upon preserving its competitive character.

RECOMMENDATIONS

The Executive order called for our "recommendations for revisions of the code." The duty which thus devolves upon the Commission is a serious one. Not only is steel the basic industry of the country, but its basing-point system is similar to basing-point practices in several other industries. The President's action with respect to steel will doubtless be deemed a precedent as to the Executive attitude toward other basing-point practices.

There are at least four theoretically possible recommendations, either—

(*a*) That the multiple basing-point system, while it is a means for preventing price competition, is justified as a permanent policy by the evils of competition; or

(*b*) That in view of the chaotic business conditions now prevailing, the basing-point system be permitted to continue until recovery has been achieved or at least further advanced; or

(*c*) That the code be so amended as to prohibit the multiple basing-point system; or

(*d*) That the code be so amended as to eliminate Federal sanction of the multiple basing-point system and relegate the legality of the practice to judicial determination.

Each of these possible recommendations will be considered.

Senator KING. I want to ask Mr. Williams a question. The President issued an order—I have forgotten the number—under the terms of which, for governmental purchases, there might be reduction below the prices fixed by the codes, and by your organization—and when I say "your organization", I mean the N. R. A.—of 15 percent, and it was required that the Planning Commission or the Planning Committee of the N. R. A. at the expiration of 6 months, should make a report as to the effects of that order of the President. That report was made and I have been trying to get copies of it. Do you know where I can get a copy of it?

Mr. S. CLAY WILLIAMS. I will look into that, Senator King. I do not know what the exact status of that is now as to the publicity. It is available, of course, here, whether publicized or not——

Senator KING. I want to get that report as soon as possible.

Mr. WILLIAMS. I will see that you get one, Senator King.

Senator KING. I asked for a number of other things while Mr. Richberg was testifying——

The CHAIRMAN. Mr. Richberg is apparently not here at the moment. Probably he will come in shortly.

Now, Mr. Curlee, please give to the reporter your full name, and the interests that you represent, and then you may proceed in your own way.

STATEMENT OF FRANCIS M. CURLEE, COUNSEL INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS

Mr. CURLEE. I represent the Curlee Clothing Co. of St. Louis, and the Industrial Recovery Association of Clothing Manufacturers.

Senator LA FOLLETTE. Will you explain, Mr. Curlee, what that association is, how many members it has, and what its purpose is, for the record?

Mr. CURLEE. That is an association of manufacturers of men's clothing, distributed throughout the United States,. It has about seventy-odd members.

Senator LA FOLLETTE. How many are there in the industry as a whole, if you know?

Mr. CURLEE. How many manufacturers in the industry?

Senator LA FOLLETTE. Yes.

Mr. CURLEE. I do not know, Senator La Follette, but I think there are several thousand, if you include the small contract shops. There are two distinct methods of production in the clothing industry, and if you regard each contract shop as a separate unit, there are several thousand. If you regard as units those manufacturers who also are merchants and sell to the retailers or to the consumers, the number would be very much less.

Senator LA FOLLETTE. When was the organization organized?

Mr. CURLEE. This association was organized on June 3, 1933.

Senator LA FOLLETTE. What was the purpose of this organization?

Mr. CURLEE. The purposes stated in the preamble are the usual purposes of trade associations, but the direct stimulus to the organization of this association was the pendency of the National Industrial Recovery legislation, and the fact that another trade association had been organized a short time before that in the clothing industry. Those were the reasons that stimulated the organization of this association at that time.

Senator KING. What was that other organization that you referred to; who were the organizers, as far as you know?

Mr. CURLEE. The Clothing Manufacturers Association of the United States of America. For brevity, those two associations are usually referred to as the "U. S. A. Association", the one first organized; and the "Industrial Recovery Association", which is our association.

The CHAIRMAN. When was the first association organized?

Mr. CURLEE. On May 21, 1933.

Senator KING. Where, and by whom?

Mr. CURLEE. The first association was organized by Mr. Sidney Hillman and a group of manufacturers who were affiliated with him conducting various factories under Mr. Hillman's union, which is the Amalgamated Clothing Manufacturers of America.

The CHAIRMAN. Was there any other trade association before that that affected the clothing business?

Mr. CURLEE. There were none, Senator Harrison. Going back into ancient history, as in most industries, there were attempts to organize trade associations, but they were all abortive and did not amount to anything, and I think they were all extinct at this time. I do not believe there was any active trade association in the industry.

The CHAIRMAN. You did not feel like going into the first organization?

Mr. CURLEE. No, sir; and I can give you my reasons for that.

The CHAIRMAN. Yes; give to the committee your reasons for that.

Mr. CURLEE. On May 21, there was a meeting held in Washington, D. C., by Mr. Hillman and 33 manufacturers, all affiliated with him.

Senator LA FOLLETTE. What do you mean by "affiliated", Mr. Curlee?

Mr. CURLEE. I think perhaps, Senator La Follette, that does deserve an explanation. It is a short term to indicate that they operate the shops which were unionized with Mr. Hillman's union, operating under contract or working agreements with Mr. Hillman's union.

The CHAIRMAN. Were they scattered over the country?

Mr. CURLEE. They were chiefly concentrated in the four big markets of Chicago, Rochester, New York, and Philadelphia. I think

perhaps there were one or two from Baltimore, but they were also associated with Mr. Hillman's union.

The CHAIRMAN. And this second group of manufacturers of clothing, what were they?

Mr. CURLEE. That particular group, I could not identify them precisely, but it was a mere minority of the industry. Later, substantially all of those industries affiliated with the amalgamated union did go into the first association. I think I can cover that pretty fully as to the relative strength of the associations.

Senator KING. This first organization was on the 21st of May?

Mr. CURLEE. Yes; the 33 men who met here in Washington represented only a minor fraction of the industry. I do not want to be misleading about that. Later they had very large accretions, but they met here on May 21 and their work was all finished in 1 day. They had articles of incorporation, bylaws, and an operating agreement, and all the other documents that were necessary. They had a very brief meeting and resolved to incorporate and to put into effect these various instruments, and elected officers, and adjourned.

The articles of incorporation provided for 21 directors. They elected 18 at that meeting, leaving three vacancies. Their articles of incorporation were in due time approved, and they got the certificate of incorporation.

There was no prior notice to the industry at large. The first intimation that the industry at large had of the organization of this association was from press reports. There were some telephone exchanges among what I may call, or what is usually called, the "independent group", which resulted in a meeting held in Washington on June 3, at which the Industrial Recovery Association was organized.

That association consisted then, in the beginning, only of manufacturers operating open jobs and of manufacturers operating open shops and of manufacturers operating under working agreements with the United Garment Workers of America.

The CHAIRMAN. Who, if anybody, was the moving spirit in the organization of that association?

Mr. CURLEE. Of the Industrial Recovery Association?

The CHAIRMAN. Yes.

Mr. CURLEE. All of that arose informally. The persons who attended that initial meeting were myself and my brother, S. H. Curlee, who is the president of the Curlee Clothing Co., Mr. Greif of Baltimore, Mr. Schoneman of Baltimore, Mr. Elmer Scheuer of the Block Co. of Cleveland, Mr. Hueman of Kelly, Hueman & Thompson of Rochester, Mr. Meyers of the Michael Stern & Co. in Rochester, and a number of others whose names I cannot recall at this moment. It was not a large gathering on June 3. On June 4 some more came in response to telephone calls.

The CHAIRMAN. Who called that meeting?

Mr. CURLEE. I do not remember, Senator Harrison. There was an exchange of telephone conversations. I will tell you just what I know about it. I was in New York City on some errand entirely disconnected with the N. R. A. or the clothing industry, and I got a telephone message from my brother in St. Louis calling my attention to the U. S. A. organization which had been organized some 2 weeks before, and stating that there would be a meeting in Washington of some independent manufacturers, and asked if I could come down to

Washington. Who first thought of it, I do not know. It rather grew up spontaneously. It met with an immediate reception.

Senator BLACK. May I ask you a question there? Are those large or small operators?

Mr. CURLEE. In this association——

Senator BLACK (interrupting). Those which you named.

Mr. CURLEE. There were all sizes there. They ran from large operators to small ones.

Senator BLACK. Freedman Marks, of Richmond; is he a member?

Mr. CURLEE. He is a member.

Senator BLACK. Is he a large or small manufacturer?

Mr. CURLEE. I think he is a fairly large manufacturer.

Senator BLACK. Samuel Finkelstein, of California; is he large or small?

Mr. CURLEE. I do not know what his volume of business is, but I think you would class him as large.

Senator BLACK. Schoneman; is he a large manufacturer?

Mr. CURLEE. Large.

Senator BLACK. L. Greif & Bro., Inc.; are they large or small?

Mr. CURLEE. Large.

Senator BLACK. Sinsheimer; is that the name?

Mr. CURLEE. Yes.

Senator BLACK. Where are they?

Mr. CURLEE. Cincinnati.

Senator BLACK. Are they large or small?

Mr. CURLEE. You would call them large manufacturers.

Senator KING. They were not amalgamated with Mr. Hillman's amalgamated union?

Mr. CURLEE. No, sir; they are not affiliated with them. I would suppose you would call the Block Co. a large manufacturer, too.

Senator COSTIGAN. What is your test of size and large and small?

Mr. CURLEE. Senator Costigan I have not any definite test, but I know the manufacturers named by Senator Black are generally substantial manufacturers, and they run down to those employing a very small number of people.

Senator COSTIGAN. Are you thinking in terms of the number of employees or the output, or both?

Mr. CURLEE. Roughly, of course, they are identical, so far as size is concerned.

Senator COSTIGAN. Have you any estimate as to the average number of employees of what you might call a large manufacturer?

Mr. CURLEE. They range all the way from several thousand employees, perhaps 4,000, down to those employing as little as 10 or 15 people.

Senator COSTIGAN. What is the number of your own employees?

Mr. CURLEE. About 2,000.

Senator COSTIGAN. And may I ask you whether they have been organized in labor unions?

Mr. CURLEE. No, sir; they have never been organized under any working agreement. We have had union men working for us from year to year for many years, but there has never been any operating agreement with the labor union.

Senator COSTIGAN. You have not distinguished between union and nonunion employees?

Mr. CURLEE. No, sir.

Senator BLACK. Mr. Curlee, the reason I asked you those questions was to see if one issue could be eliminated in the beginning. I would judge, then, from what you say, that so far as the opposition of this group to the codes is concerned, it is the opposition of a group of manufacturers, many of whom or perhaps most of whom are large, comparatively speaking, and the opposition is not based upon the hostility of small-business enterprises?

Mr. CURLEE. Senator, I did not mean to make any such distinction in the two associations.

Senator BLACK. That is what I wanted to find out.

Mr. CURLEE. Both of them range from the largest to the smallest.

The CHAIRMAN. Will you not develop that thought, Mr. Curlee, and tell us just the difference between these two organizations, and give to us the approximate membership of each, the volume of business, and the number of employees that they may have?

Senator KING. Before doing that, may I interrupt? At this meeting on May 21 at which Mr. Hillman was present, what part of the industry did that represent? When I speak of the industry, I speak of the clothing industry.

Mr. CURLEE. That is the meeting on May 21?

Senator KING. Yes; when you say there were 20 or 25 men here at the Mayflower Hotel?

Mr. CURLEE. According to the press reports there were 33 persons present, Senator, and I could not say what the relative volume of that particular 33 was, but they got in later substantially all of their elements of the industry.

Senator LA FOLLETTE. When you say "their elements", what do you mean? Do you mean those that are unionized?

Mr. CURLEE. Not that, Senator. All of those who were unionized with Mr. Hillman's union. Bear in mind that in our situation we have open-shop manufacturers and those affiliated with the United Garment Workers of America. The United Garment Workers of America is the old, historic union in this industry and has been affiliated with the American Federation of Labor from the very beginning, and at that time the Amalgamated Union was an outside union. Without meaning any disrespect, what is commonly known in labor-union circles as a "maverick" union, using their own nomenclature.

The CHAIRMAN. Not affiliated with the American Federation of Labor?

Mr. CURLEE. Not affiliated with the American Federation of Labor. Last December, at the annual meeting of the American Federation of Labor, they were admitted. December, a year ago, I mean.

Senator LA FOLLETTE. Mr. Hillman is now a member of the executive council of the American Federation of Labor, is he not?

Mr. CURLEE. I am not informed on that. I dare say it is true.

Senator BARKLEY. How many members are there of your association?

Mr. CURLEE. There are seventy-odd, Senator.

Senator BARKLEY. What proportion is that of the total number of institutions in the clothing business?

Mr. CURLEE. The best evidence I have of that is the total number of employees——

Senator BARKLEY (interrupting). I do not mean employees. I mean factories or plants or concerns who would be eligible for membership in your organization or in any organization of manufacturers.

Mr. CURLEE. I believe you were out when I went into that a little while ago, Senator.

Senator BARKLEY. I do not want you to repeat it, then, if it has already been given.

Senator BLACK. Mr. Curlee, the figures that have been given to me show 3,600 units as a whole and 70 in your organization. Is that about correct?

Mr. CURLEE. Seventy-odd. I could not say about the 3,600; I simply do not know. That information is all in the hands of the code authority.

It may be necessary to anticipate some questions, and in the interest of brevity, I think I can give briefly the line of demarcation between these two elements of the industry.

The CHAIRMAN. I wish you would do that.

Senator LA FOLLETTE. Before you do that, Mr. Curlee, I would like to ask you if you know how many of the group of people whom you mentioned a while that got together to organize the Industrial Recovery Association had working agreements commonly known as "collective-bargaining agreements" with their employees?

Mr. CURLEE. The Block Co. had collective agreements with the United Garment Workers. That was one of the charter members. Michaels-Stern & Co. had a collective agreement with the United Garment Workers. There were some others whose names I cannot remember now who had.

Senator LA FOLLETTE. How about the company of which your brother is the head? Did that have collective-bargaining agreements at the time this association was organized?

Mr. CURLEE. No, sir; the company had operated an open shop since its inception.

Senator LA FOLLETTE. It is one of those companies that had opposed organization of its employees for the purpose of collective bargaining?

Mr. CURLEE. I would not say opposed, Senator. For many years——

Senator LA FOLLETTE (interrupting). If they did not oppose it how did it happen that there were no collective-bargaining agreements arrived at in that company?

Mr. CURLEE. I wanted to answer the question fully.

Senator LA FOLLETTE. Surely.

Mr. CURLEE. For many years the company operated an open shop. Before the advent of the Amalgamated Union on the scene, members of the Garment Workers Union and members of no union were employed indiscriminately and without distinction, and there was an attempt to unionize the company and enforce a closed shop in the year 1925, which was resisted against the Amalgamated, and not against the Garment Workers.

Senator LA FOLLETTE. Did you have a strike?

Mr. CURLEE. I do not know whether you would call it a strike or not. There were about a thousand people employed in St. Louis,

and a strike was called against us, and thirty-odd people walked out in response to the strike.

Senator LA FOLLETTE. What were the average wages being paid in the plant at that time, if you know?

Mr. CURLEE. I am sorry, Senator, I could not give you that information. It was a good many years ago.

Senator LA FOLLETTE. Can you give me any information of any time down prior to the enactment of the Industrial Recovery Act, to get it down more recently in time?

Mr. CURLEE. I do not believe I can give you that information now, but I am quite sure that I can. If I could be here tomorrow——

Senator LA FOLLETTE. You might furnish it for the record on a subsequent day.

Mr. CURLEE. I will, very gladly.

Senator BARKLEY. Mr. Chairman, I have to go to another committee, and I do not know how long Mr. Curlee will be on the stand. I would like to ask Mr. Curlee a question that is more or less personal. Have you been here during the entire hearings before this committee?

Mr. CURLEE. Yes, sir.

Senator BARKLEY. Have you sent any request to anybody in Kentucky by telephone or telegraph or by other means of communication asking that they wire me with reference to my methods of interrogating witnesses before this committee?

Mr. CURLEE. Not you personally, Senator. I have had some telephone communications from various places with regard to the issues pending here.

Senator BARKLEY. I was absent the first 2 days of Mr. Richberg's testimony. I was here on the third day, and after the third day's session was over, I received this telegram from the Merit Clothing Co., Mr. W. H. Brizendine, at Mayfield, Ky., who is a life-long friend of mine, and who is an honorable man, and who would not have sent me such a telegram unless somebody in Washington requested him, and that that request was based upon a false statement. I want to put this in the record so that the committee and the people who were present at that hearing and heard what occurred, will know whether it is based upon any facts that are justifiable from my conduct or from my method of investigating or of interrogating witnesses, and if you or anybody else in Washington requested Mr. Brizendine to send me this telegram, then I state if he sent it according to that request it is based upon a false statement, and it is a species of conduct which I regard as contemptible by anybody. I would like to have this telegram in the record.

Senator LA FOLLETTE. Won't you read it, Senator?

Senator BARKLEY (reading):

Mayfield, Ky., March 11, 5 p. m.

on the day when I first interrogated Mr. Richberg:

You are reported to have materially and conspicuously favored Richberg by your attitude and questions before the investigating committee at its session. In the interest of Kentucky industry and our own very existence we again appeal to you to bring out every phase of the question for a fair and impartial hearing and conclusion.

If I have asked anybody any question or have favored any attitude in this hearing that was not based upon my desire to bring out all of

the facts, I would like for somebody at this public hearing to state what question it was which I asked, and what that attitude has been. On the face of it, that telegram purports to be an effort to intimidate me as to the method of my interrogation, and if you inspired it or anybody representing you inspired it, or anybody else here inspired it, I want to denounce it as a contemptible piece of business on the part of anybody who would ask a friend of mine to send me such a telegram as that, and if you think or anybody else thinks that my attitude on this committee with respect to this legislation can be influenced by manifest and obvious threats to intimidate me with respect to the method of my asking questions, you do not know enough about me to know that it cannot be done. If you did not do that, then I acquit you, but I do resent on the part of anybody in Washington what manifestly was an effort to intimidate me, either by calling up this party or wiring him immediately after my first appearance before this committee, and indicating a false statement as to my attitude or my methods of investigation.

Mr. CURLEE. Well, Mr. Senator, I think it is rather intemperate for you to denounce conduct as contemptible which is based upon a hypothesis.

Senator BARKLEY. This is no hypothesis. This telegram would not have been sent to me unless somebody here advised the man who sent it that my attitude was conspicuously and notoriously friendly toward Richberg and the N. R. A., when as a matter of fact, not only before this investigation, but since it started, I have sought by my questions to bring out every side of the controversy, and I have called attention to criticisms which I myself have registered against the N. R. A. at the request of small industries in my State.

The CHAIRMAN. I may say that the whole committee feels in an open frame of mind with reference to this whole matter, and that there is no Senator that can be intimidated, and I am sure that Mr. Curlee—I have had conferences with him and he is opposed to certain propositions of the N. R. A. I know Mr. Curlee and I know him to be fair, and I am sure that he would not have us not bring out anything in this matter and make a thorough investigation of it.

Now proceed, Mr. Curlee. You were going to tell the difference in your own way, between these two organizations.

Mr. CURLEE. Yes, sir; in the four great markets of Chicago, Rochester, New York, and Philadelphia, those are the oldest and the most highly developed—at least the oldest markets in the country, and formerly did an overwhelming preponderance of the clothing business of the United States.

The system usually practiced there is for the manufacturer, so-called, who owns the merchandise and distributes it, and who has the contract with the retailers and the outlets for it, to operate what is called an "inside shop", in which he cuts the materials, and the other processes are performed under contract by so-called "contract shops."

These contract shops are these small shops, usually, operating in lofts and whatnot, and the major part of the business in those great markets, those congested markets, is conducted in that manner. The manufacturer has no responsibility to these contract shops, and that is where the original sweat-shop system originated. That is in contrast to the ways in those regions commonly called in this industry the "hinterland", that is the terminology applied by the code author-

ity, in the hinterland, where the industry is newer. They have had no reservoir of trained labor to draw from, and their shops are usually completely integrated shops in which they perform all of the processes of manufacturer.

The result of that as to size is this: A large manufacturer in New York City, for example, may employ only a few people, that is, a cutting force. He contracts out the rest of his processes on the work to various contract shops. There are contract shops known as "vest shops, pants shops, and coat shops", and they complete the processes of manufacture.

Many of these are small, so that if you regard that as one unit, the large manufacturer and distributor in New York City would have a large number of subsidiary contract shops. If each of those be regarded as a separate unit, then it makes a large number of manufacturers.

So when you ask about 3,000 or whatever number it is, the overwhelming preponderance of that number consists of these small contract shops.

Senator BLACK. May I ask if your company has a subsidiary company or subsidiary shops of that kind?

Mr. CURLEE. No, Senator, that is a completely integrated shop in Mayfield.

Senator BLACK. Is that your company?

Mr. CURLEE. Yes, sir. About half of the production is in St. Louis and half in Mayfield, and each shop is completely integrated.

Senator BARKLEY. In order that I may get the record clear because I have to go to another committee—I do not know whether you communicated with Mr. Brizendine at Mayfield with reference to this matter which I mentioned a little while ago of the day when I received this telegram?

Mr. CURLEE. Yes, sir; I talked with Mr. Brizendine.

Senator BARKLEY. Over the telephone?

Mr. CURLEE. Yes, sir.

Senator BARKLEY. You called him up?

Mr. CURLEE. Yes, sir.

Senator BARKLEY. And you told him that I had exhibited some degree of friendship toward Mr. Richberg's attitude?

Mr. CURLEE. I do not think that I interpreted your attitude toward him, Senator.

Senator BARKLEY. You asked him to send this telegram?

Mr. CURLEE. I suggested to him that it might be well to send you a telegram.

Senator BARKLEY. And you told him what to say?

Mr. CURLEE. No, sir; I did not.

Senator BARKLEY. Did you tell him that my attitude toward Mr. Richberg and the N. R. A. was materially and conspicuously friendly?

Mr. CURLEE. No, sir.

Senator BARKLEY. What did you tell him upon which he would base the language of this telegram?

Mr. CURLEE. I told him that this matter was before the committee and that you were a member of the committee.

Senator BARKLEY. He knew that, because he had been down in Washington and had talked with me previously in a very friendly and sympathetic way and about the whole proposition. He knew I was on this committee.

Mr. CURLEE. He knew you were on it, I believe, yes, sir. He was very much interested in it.

Senator BARKLEY. Yes.

Mr. CURLEE. He had previously called me up to keep him advised about the situation, and I think in this telephone message that I had called him up—it was a mere general discussion of the course of events. He was interested in this resolution.

Senator BARKLEY. Had you called him up the 2 previous days in which Mr. Richberg had testified?

Mr. CURLEE. No, sir; I think he called me up once and I called him once after he left here.

Senator BARKLEY. I want to say in justice to Mr. Brizendine that I have the greatest respect for him and I would not in any way impugn his motives. I knew as soon as I received the telegram that somebody in Washington had either called him up or wired him and asked him to send it, otherwise he would not have done it.

Mr. CURLEE. Yes, sir; I share that respect for Mr. Brizendine.

Senator LA FOLLETTE. If I understood you, you said that you asked him to send a telegram?

Mr. CURLEE. Yes; he was discussing the matter with me. We had been discussing it. He was very much interested in it. He operates a clothing factory in Mayfield.

Senator LA FOLLETTE. I understand that, but if I understood your answer correctly, you asked him to send a telegram?

Mr. CURLEE. I do not believe I did. I think I suggested it would be a good idea if he—he told me that he and Senator Barkley were close friends—and I suggested it would be a good idea for him to telephone Senator Barkley and keep in touch with him. I think that is what I said.

Senator LA FOLLETTE. Did you by inference or in any way make any statement concerning the alleged attitude of Senator Barkley in this investigation?

Mr. CURLEE. Oh, no, sir.

Senator LA FOLLETTE. Upon what basis, if I may ask, did he know at 5 o'clock in the afternoon of the day that this telegram was sent and that these alleged questions were asked, that Senator Barkley's attitude was conspicuously unfriendly, if that is the language?

Mr. CURLEE. He did not know that Senator Barkley's attitude was conspicuously unfriendly, but we had a long telephone conversion, Senator. Just what was said in the conversation I do not know.

Senator BLACK. Did you mention Senator Barkley?

Mr. CURLEE. Sure, I mentioned Senator Barkley, and I believe I mentioned you, Senator Black, I am not certain. [Laughter.]

Senator BLACK. I did not get a telegram.

Mr. CURLEE. You are not from Mr. Brizendine's State.

Senator BARKLEY. Did you call anybody in Alabama and ask them to send a telegram to Senator Black?

Mr. CURLEE. I did not. I do not think I know any clothing manufacturers in Alabama. Possibly I would have.

Senator LA FOLLETTE. Did you call any people in any other States and ask them to send telegrams to the Senators on this committee or communicate with them in any way? You can answer that question.

Mr. CURLEE. I do not know whether I can or not. I was trying to think. I do not believe I did.

Senator LA FOLLETTE. Well, don't you know?

Mr. CURLEE. I was just trying to think whether I had——

Senator LA FOLLETTE (interposing). Let us have a frank answer, Mr. Curlee. You certainly know whether you communicated with any people in any other States and asked them to wire members of this committee or communicate with them?

Mr. CURLEE. I do not believe I did. I do not recall any now.

Senator LA FOLLETTE. You remembered very distinctly apparently communicating with this gentleman at Mayfield, Ky.

Mr. CURLEE. Mr. Brizendine had been here a few days before——

Senator LA FOLLETTE (interposing). I know that. That is what you said.

Mr. CURLEE (continuing). He operates a factory in Mayfield where my company operates a factory, and had been in close touch with me and was tremendously interested in it, he being a clothing manufacturer who had been in Washington a few days before.

Senator LA FOLLETTE. How do you explain the fact that this gentleman at 5 o'clock of the afternoon of the day when this alleged cross-examination or questions asked by Senator Barkley took place, had information given to him by somebody that Senator Barkley's attitude was conspicuously one way or the other toward the subject matter of this investigation?

Mr. CURLEE. I have no explanation of it to offer, Senator. I said I did talk to Mr. Brizendine——

Senator LA FOLLETTE (interposing). Do you testify that nothing said in your telephone conversation had anything to do with sending this telegram?

Mr. CURLEE. I would not say that, Senator. I will tell you what the substance of the conversation was.

Senator LA FOLLETTE. Tell us then just how far you did go in interpreting Senator Barkley's attitude on the subject matter of this investigation.

Mr. CURLEE. I told him all I knew or could remember of the general course of the examination.

Senator LA FOLLETTE. You went into that then?

Mr. CURLEE. I did go into that.

Senator LA FOLLETTE. Senator Barkley's questions then were a part of the subject matter of your telephone communication with the gentleman who sent the telegram?

Mr. CURLEE. I believe I told him all I remembered about the course of the examination.

Senator LA FOLLETTE. Did you give any impression in anything you said, concerning Senator Barkley's attitude toward the subject matter of this examination?

Mr. CURLEE. No, I did not interpret Senator Barkley's attitude.

Senator LA FOLLETTE. How did the gentleman who sent the telegram know what Senator Barkley's attitude was?

Mr. CURLEE. I don't know.

Senator LA FOLLETTE. Do you testify before this committee that your conversation had nothing to do with giving the impression to the gentleman who sent the telegram that Senator Barkley's attitude was one way or the other?

Mr. CURLEE. I could not say that, Senator. I do not know how he might have interpreted the conversation.

Senator LA FOLLETTE. You know what you said, do you not?

Senator BARKLEY. Based upon the wording of this telegram, how do you think he interpreted it?

Mr. CURLEE. I think he must have interpreted it as he stated in the telegram unless he had communications from someone else. I do not know that he did.

Senator LA FOLLETTE. I am not asking you to testify to anything you do not know about, but you certainly can give this committee a frank answer if you want to, whether or not you as a lawyer would interpret the things which you said to this gentleman over the telephone as being responsible for giving him the impression of Senator Barkley's attitude which he indicated in the telegram that he sent to Senator Barkley. Now, just give us a frank answer on that.

Mr. CURLEE. As to whether he so interpreted it?

Senator LA FOLLETTE. I will ask the reporter to read the question.

(The question is read to the witness as follows:)

Senator LA FOLLETTE. I am not asking you to testify to anything you do not know about, but you certainly can give this committee a frank answer if you want to, whether or not you as a lawyer would interpret the things which you said to this gentleman over the telephone as being responsible for giving him the impression of Senator Barkley's attitude which he indicated in the telegram that he sent to Senator Barkley. Now, just give us a frank answer on that.

Mr. CURLEE. Whether I should interpret what I said as leading him to believe that?

Senator LA FOLLETTE. Precisely.

Mr. CURLEE. I think not. He might have so interpreted it, but I would not have so interpreted it.

Senator COUZENS. You intended him to so interpret it, did you not?

Mr. CURLEE. I think not, Senator.

Senator COUZENS. I do not think that is a fair answer.

Senator LA FOLLETTE. What was your impression of Senator Barkley's attitude on the afternoon of the day that you communicated with this gentleman?

Mr. CURLEE. I had no impression of Senator Barkley's attitude.

Senator BARKLEY. You were here that day?

Mr. CURLEE. I was here that day.

Senator BARKLEY. And it made no impression on you at all? [Laughter.]

Do you think that that telegram or such a telegram as he would send based on your conversation with him, would change my attitude?

Mr. CURLEE. I would not think so, Senator.

Senator BARKLEY. Then why did you ask him to send it?

Mr. CURLEE. I did not ask him to send the telegram.

Senator BARKLEY. You asked him either to send a telegram or call me up?

Mr. CURLEE. Yes, sir; I thought perhaps a relation by him of the situation of his industry there would influence the Senator from that State, and properly.

Senator BARKLEY. Why did you want me to be influenced otherwise from what my attitude was if I made no impression on you as to what my attitude was?

Mr. CURLEE. This, Senator, was not an effort to get him to correct a wrong attitude on your part, but I knew that he wanted and was tremendously interested in this situation and wanted everything made known as far as he could of the situation in his industry.

Senator LA FOLLETTE. There is nothing in this telegram that has anything to do with the conditions in this industry. The telegram relates solely to an alleged attitude which Senator Barkley took on the morning of the day the telegram was sent. If your answers are truthful and frank answers, your telephone conversation does not seem to have produced the results that you desired.

Mr. CURLEE. Perhaps not.

Senator BARKLEY. I want to say this: I understand Mr. Brizendine's attitude and his situation, and I understand thoroughly the situation of the Merit Clothing Factory, and I have been sympathetic with it and have attempted to aid it as best I could, but if I am expected to turn into a prosecuting inquisitor to seek to denounce and discredit everything the N. R. A. has done on the part of those who want to break it all down because of the peculiar situation in their business, I do not occupy that attitude and I do not intend to assume that attitude regardless of the request of anybody, friend or enemy. I have thought to obtain real information here. I have not indicated any unfriendliness on the part of anybody. I do not mind admitting publicly that I am a friend of Mr. Richberg, and I have known him for many years and have respect for his integrity and for his ability. I am sorry that so much time has been devoted to this matter, but it may be the key to a great many of the situations that have developed.

Senator LA FOLLETTE. Mr. Curlee, do you have an office here in Washington?

Mr. CURLEE. I have not.

Senator LA FOLLETTE. Have you had any correspondence with anybody since this investigation started?

Mr. CURLEE. You speak of an office. There is a temporary office of this association here; yes, sir.

Senator LA FOLLETTE. I say, have you personally written any letters or sent any telegrams since this investigation started, concerning the investigation?

Mr. CURLEE. Oh, I have had some correspondence; individual correspondence. There has been no great mass of letters sent out; no form letters or anything of that sort.

Senator LA FOLLETTE. I am not asking that; I am asking if you have communicated by telegram or by letter with people outside of Washington relating to the subject matter under investigation by this committee?

Mr. CURLEE. I have had no more than the normal correspondence with persons with whom I am acquainted.

Senator LA FOLLETTE. You did not answer my question. I asked you whether you had had any correspondence either by telegram or by letter with any persons outside of the city of Washington relating to the subject matter under investigation by this committee.

Mr. CURLEE. That is to the N. R. A.?

Senator LA FOLLETTE. I will repeat and restate my question. Have you had any communications by letter or otherwise with people outside of the city of Washington concerning this committee and its conduct of this inquiry?

Mr. CURLEE. I do not recall writing any such letters. I have had some correspondence with our members——

Senator COUZENS (interposing). I desire this witness to be put under oath. The resolution permits the committee to put these witnesses under oath, and I would like this man sworn.

The CHAIRMAN. I think we had better go into executive session.

Senator LA FOLLETTE. No, Mr. Chairman, not yet, please. I think that Senator Couzens has a perfect right to ask that the witness be sworn.

The CHAIRMAN. We will take a vote of the committee on that proposition.

Senator LA FOLLETTE. This is the first time that I have been a member of a committee of the Senate, during some 9 years of service, where the chairman of the committee has objected to an oath being administered to a witness at the request of a member of the committee.

The CHAIRMAN. The chairman is not objecting to it, but the chairman feels that every witness must be treated fairly and must be given every opportunity——

Senator BLACK (interposing). I move that all witnesses, including this witness, hereafter be put under oath.

Senator LA FOLLETTE. I second the motion.

The CHAIRMAN. From now on, without objection, all witnesses will be put under oath. I think that is fair for all witnesses.

Senator COUZENS. Now let us begin with this witness.

(Whereupon the chairman administered the oath to the witness.)

Senator LA FOLLETTE. Now, Mr. Chairman, I request for the record that a subpena be issued duces tecum for all correspondence and letters, telegrams, or other written communications which may be in Mr. Curlee's possession, that relate to the conduct of this investigation by this committee on the subject matter which it has under investigation.

Senator GORE. Mr. Chairman, we are going to put all of these witnesses under oath. Let us apply the same treatment to all witnesses.

The CHAIRMAN. That has been agreed to, Senator Gore.

Senator GORE. I mean, to produce their papers. I think if any Senator wants it done, it should be done. Let us have the same thing relate to all. I take it this man is against the N. R. A. [Laughter.] I am wondering whether free-born American citizens who are against the N. R. A. are to be heard before this committee?

Senator LA FOLLETTE. I would like to say in regard to Senator Gore's statement that he was not here when Senator Barkley read a telegram from a manufacturer——

Senator GORE (interposing). I was here.

Senator LA FOLLETTE (continuing). From his State, criticizing his attitude.

Senator GORE. I heard that.

Senator LA FOLLETTE. And I submit a reading of the responses of this witness to the questions asked him concerning it, were not free and frank, and for that reason I want to ascertain whether he has been communicating with other people, interpreting the attitude of the members of this committee.

Senator GORE. I am not raising the question——

Senator LA FOLLETTE (interposing). And asking them to use their influence to try to change it.

Senator GORE. I am not raising any objection to that at all.

The CHAIRMAN. Senator Gore, if there is any request from any other witness that certain papers shall be produced, we will have them produced.

Senator GORE. My point is, I am against this N. R. A. myself, and I think that free-born American citizens who are against it ought to be allowed to come here and testify.

Senator BARKLEY. I do not know that there is any effort to prevent anybody from doing it. We have not gotten far enough along to determine——

The CHAIRMAN (interposing). Mr. Curlee was asked to come before the committee today. We recognized that he was against the N. R. A. and had certain views with reference to it. Now, I want to proceed and get along as rapidly as we can in this investigation.

Senator GORE. I take it that people who are opposed to the N. R. A. have letters sent in every day from those who are against it, and those who are in favor of it have the letters sent in in favor of it. That is the way this sort of business is usually conducted. It ought to be as accessible to one side as the other.

The CHAIRMAN. I agree with you thoroughly on that.

Senator GORE. If we are going to hear witnesses on one side or the other, we should act in that way with respect to them.

The CHAIRMAN. The committee will act accordingly. We will treat both sides just the same in this investigation.

Those in favor of the motion made by the Senator from Wisconsin that these papers be produced say aye.

(Chorus of ayes.)

The CHAIRMAN. It is so ordered. Mr. Curlee, will you produce them, otherwise the clerk of the committee will take proper action.

Now, proceed Mr. Curlee. It may be that you will want the stenographer to tell you where you left off so you will know where to proceed.

Mr. CURLEE. I think we were discussing at the time the difference in the methods of manufacture in the two groups.

As I have stated, the U. S. A. Association group is chiefly in those four great markets, not entirely, as they have some units outside. The Industrial Recovery Association has some units within those markets, not many.

The manufacturers in the U. S. A. Association, however, perform a great deal of their work by the homework method, that is the work was cut and sent out in bundles and carried out to the homes of various and sundry people. Various estimates of that run all the way from 20 percent to a much higher figure. Mr. Herwitz, the controller of the men's clothing code authority at one hearing testified that it would run 20 percent or more of the production, was by homework methods. The question has been asked about the comparative size of the members of the two associations. The U. S. A. Association——

The CHAIRMAN (interposing). You are talking as of this time?

Mr. CURLEE. At this time. The well-known and large manufacturers in the U. S. A. Association are Hart Shaffner & Marx; Kuppenheimer; Society Brand; Fashion Park; Hickey-Freeman; Palm Beach, and Knit-Tex (Cohen, Goldman Co.).

Those are all large manufacturers. Many, or most of them, are letting their work out to their contract shops. I do not know about all of them, but some of them do.

Senator KING. Are they in the four large cities?

Mr. CURLEE. They are all in the four large cities. In this morning's paper——

Senator COSTIGAN (interposing). What paper is that?

Mr. CURLEE. The New York Times of today. There are a number of names appended, but the text of it is very brief. I will read it:

An open letter by the small business man to the Congress of the United States of America. We are some of the small business men of the country who address you in person and ask you to renew the National Industrial Recovery Act.

We have not authorized the Curlees on the one hand, nor the Darrows on the other, to speak for us and do not consider them qualified to do so at any time.

The Industrial Recovery Association is composed of large clothing manufacturers. It will be interesting to note that three names, i. e. Curlee, Schoeneman, and Greif, that appear on their letterhead under column entitled "Officers", employ more workers than the first 300 names appearing below. This association, of which S. H. Curlee is president, and F. M. Curlee is general counsel, at public hearings in Washington, in July 1933, demanded in a printed brief the complete extinction of the "owners of small scattered shops" who "operated * * * on a minimum of invested capital." They have "created a competitive condition grossly unfair to those established manufacturers" who "assume the burden of stable investments."

And so on.

Appended to that is a large number——

Senator COSTIGAN (interposing). You have read practically all of this open letter. Will it not be well to complete it?

Mr. CURLEE (reading):

We have an abiding faith in our Government and its institutions. We have an abiding faith in the judgment and integrity of our lawmakers. We earnestly pray to you in behalf of our families, in behalf of the preservation of our institutions, which we cherish, that you renew the National Industrial Recovery Act, so that we and our families, and the workers in our shops and their families, may not again be thrown on the breadlines, from which many were rescued by the enactment of the National Industrial Recovery Act.

Appended to that is a list, a large list of names.

Senator COSTIGAN. Colonel Curlee, apparently the signers of this letter may be summarized according to lists given in advance or in connection with each separate city. The signers purporting to represent Baltimore, Md., speak for 78 establishments, employing from 20 to 175 workers, average per establishment, 50 workers; Boston, Mass., 23 establishments, employing from 18 to 100 workers, average per establishment, 48 workers; Cincinnati, Ohio, 18 establishments, employing from 6 to 125 workers, average per establishment, 45 workers; Chicago, Ill., 93 establishments, employing from 10 to 120 workers, average per establishment, 41 workers; New York City, N. Y., 458 establishments, employing from 8 to 240 workers, average per establishment, 59 workers; Newark, N. J., 56 establishments, employing from 25 to 110 workers, average per establishment, 44 workers; Passaic, N. J., 35 establishments, employing from 32 to 230 workers, average per establishment, 100 workers; Philadelphia, Pa., 97 establishments, employing from 21 to 210 workers, average per establishment, 45 workers; Vineland, N. J., 14 establishments, employing from 40 to 132 workers, average per establishment, 70 workers.

The individual names of the signers accompany these summaries.

Senator GORE. What are you reading from?

Senator COSTIGAN. The New York Times, Friday, March 22, 1935, an advertisement.

Senator KING. Senator Costigan, I was wondering if those various groups were contractors in the sense that they receive from the manufacturers the garments after they have been cut, and for them to do the work.

Senator COSTIGAN. I assume that Colonel Curlee is the best witness on that subject.

The CHAIRMAN. Since there has been so much discussion about this, this advertisement may go into the record in full.

(The same is appended at the close of the day's session.)

Senator GORE. Is this advertisement for the N. R. A. or against it?

The CHAIRMAN. It is for the N. R. A.

Senator GORE. Is this advertisement paid for by somebody?

The CHAIRMAN. I imagine that will be developed here.

Senator GORE. If it is, I think we ought to investigate it and see who it is.

The CHAIRMAN. One of the opponents of the N. R. A. is producing this petition of those who favor it.

Senator GORE. Mr. Curlee, are you one of the Curlees mentioned a minute ago in this advertisement?

Mr. CURLEE. Yes, Senator.

Senator GORE. Are you the lawyer?

Mr. CURLEE. I am the lawyer.

Senator GORE. I want to say, Mr. Chairman, for the record, I do not know this man and never heard of him before, but I just want to bring out the truth on both sides and give everybody an open court here.

The CHAIRMAN. I think the committee understands your position, Senator Gore. Go ahead, Mr. Curlee.

Senator KING. Could you answer the question which I propounded to Senator Costigan, if you will forgive me for asking him. Do you know whether these various groups are manufacturers themselves in the sense that they buy the cloth and complete the production of the suits or the garments, or are they persons who can come in the category of being—I do not know what you call them——

Mr. CURLEE (interrupting). Contract shops.

Senator KING. Yes; contract shops. If you know.

Mr. CURLEE. I am quite sure they are contract shops for this reason: I am unable to identify the name of any one of them, and they are all very small employers. I think it is certain that substantially all, if not every one of them, is a contract shop.

Senator KING. Proceed. I did not want to interrupt you.

Mr. CURLEE. It was stated in that advertisement that in 1933 I had made the attempt to destroy the contract shops. This is what is quoted from or cited. It is a very short brief that I prepared for the Industrial Recovery Association in the hearings on the formation of a code.

Senator KING. Are you the attorney for that association?

Mr. CURLEE. Yes, sir.

Senator KING. Are there many members of the association?

Mr. CURLEE. There are about 70-odd members of the association. This is what was said in that brief on contract shops. [Reading:]

In the clothing industry, there exists a remarkable practice whereby individuals and corporations limit their manufacturing processes to the cutting of textiles

and effect the major, essential portion of their manufacturing through contracts with the owners of small, scattered shops, called "contract shops." These contract shops largely operate on highly seasonal, peak production schedules on a minimum of invested capital, and with a minimum responsibility to labor for the maintenance of continuous employment. In Bulletin No. 557 of the Bureau of Labor Statistics of the United States Department of Labor, published in January 1932, entitled, "Wages and Hours of Labor in the Men's Clothing Industry—1911 to 1930", it is said:

"In the men's clothing industry there are usually two busy and two dull seasons in the year. The busy seasons are in midsummer and in midwinter. Clothing for fall and winter wear is made in midsummer, and for spring and summer wear is made in midwinter. In some shops there is a fairly uniform amount of work throughout the year; in others, the work fluctuates materially. The fluctuation is more in contract than in other shops. Some contract shops close down during the dull season, and others operate with reduced forces, or less than the customary hours per day and per week."

This practice has created a competitive condition grossly unfair to those established manufacturers who own completely integrated factories, maintain sales organizations, and assume the burden of protecting stable investments and of providing continuous employment of labor. The operation of such shops has made for sporadic, seasonal employment of labor, has depressed prices, and has resulted in the demoralization of the clothing industry.——

Senator LA FOLLETTE (interrupting). Will you pardon me? Does that "depressed prices" refer to the wages of labor or to the prices of the garments?

Mr. CURLEE. Labor. [Continues reading:]

It is a growing evil. That the immediate prohibition of this practice would require too rapid a readjustment of existing methods must be recognized. But the growth of the evil should be immediately arrested, and the "contract shop" method of manufacture ultimately prohibited. To this end we recommend (and in our letter of application accompanying our proposed code, so recommended) to the Administrative and Advisory Agency that investigation be made of the "contract shop" evil and that, if it is found that the facts support the conclusions herein submitted, the following section be added to the code:

"Section —. From and after the ------ day of ----------, each manufacturer shall, in his own shops, plants, or factories, perform all of the manufacturing operations necessary for the conversion of textiles and/or fabrics into finished garments."

We criticized that on the very best of authority.

Senator LA FOLLETTE. You mean you criticized the practice of contracting?

Mr. CURLEE. Yes, sir.

Senator GORE. Is that the practice where in the usual contract shops they work during the busy or peak season and employ a lot of people at long hours and low wages, and when the peak is over, fire them all and close the shop? In other words, it is the sweat shop?

Mr. CURLEE. Yes, sir; that is the evil that is inherent in the contract-shop system.

Now, I want to read from an address, The Rise of the Clothing Workers, by Joseph Schlossberg. This is published under the imprimatur of the Amalgamated Clothing Workers of America, and is dated, New York, N. Y., 1921, from the educational department.

The sweater, the owner of the sweatshop, who passed under the perfectly respectable name of contractor, was the middleman between the manufacturer and the worker. The contractor of today is performing the same economic function, but his position has been greatly changed through the activity of the union. Responsibilities, unknown in the early days, have been imposed by the union upon the contractor and the most revolting physical and moral condition of the sweatshop have been entirely eliminated.

The sweatshops afforded the manufacturer many advantages. He was in a position to employ on his own premises a minimum of help, which meant a tremendous saving in rent, superintendence, and in other items. Thus two

classes of shops developed; the "inside" shop, which was the manufacturer's own factory, and the "outside" shop, which was the sweat shop. Cutting was always done "inside" and tailoring mostly "outside." That was one big factor in setting the cutter up as an aristocrat among the tailors. That feeling of "superiority", later fostered by the United Garment Workers, made cooperation between cutters and tailors impossible. The Amalgamated Clothing Workers brought about equalization by raising both the tailors and the cutters to a new, different and higher level of "superiority", the high dignity of human brotherhood.

The tailors who were fortunate enough to work "inside" enjoyed better sanitary conditions, more or less regular working hours, and above all, security in wages. The "sweater" frequently absconded with the earnings of the workers. The latter had no redress. They were strangers to the manufacturer. He did not employ them; he employed the contractor only. One of the attractive features of the sweatshop for the manufacturer was his perfect freedom from responsibility to the workers.

Senator COSTIGAN. Have you any objection to having your brief from which you read a moment ago, included in the record?

Mr. CURLEE. I will be very glad to do that.

The CHAIRMAN. That brief is quite voluminous. Could you give a copy to each member of the committee? Would that be satisfactory?

Mr. CURLEE. The brief is a short one, Senator, and I will be glad to put it in the record. It is only 13 pages.

The CHAIRMAN. Very well then, put it in.

(The brief referred to is appended at the close of the day's session.)

Senator BLACK. Have you finished on that particular point of wages, Mr. Curlee, because when you do finish, I want to ask you one or two questions on wages.

Mr. CURLEE. Just one more short excerpt.

I am now reading from a book entitled "The Amalgamated Clothing Workers of America—A Study in Progressive Trades-Unionism", by Charles Elbert Zaretz, dated 1934. There is a table arranged by cities showing the number of shops, the average number of workers for several different years, and following that, is this comment——

Senator KING (interrupting). I would like to ask you a question if I may. When you speak of a shop there, is that contractees—if I may use that expression—of a shop? When you use the word "shop", what does it mean?

Mr. CURLEE. A shop means anything. The cutting is called the "inside shop", and in the case of an integrated manufacturer who does all of his work in his shop, that is called an "inside shop." A shop where the cutting is done is called an "inside shop" no matter how many processes are performed there.

Senator KING. Let me ask you this question. Suppose I were a manufacturer in New York and did the cutting there, employing a limited number, but would send the unmade garments after they were cut, to New Jersey or to Philadelphia, or to some other place, to A, B, or C. Would A, if he had three or four people in his shop, be called a "shop"?

Mr. CURLEE. That would be called a contract shop; yes, sir; or a shop if the distinction was not necessary, but they are all denominated "shops", and they are divided into "inside shops" and "contract shops."

This table shows the predominance of the small shop in New York, Philadelphia, and Boston market, with very little change in the average size of the factories from the 1923 to the 1929 census. The large inside shops, in New York City,

Cincinnati and Cleveland, are dominating their respective markets, and they have been growing in size during the same period.

The decrease in the average number of works in the Chicago market can be traced to the inroads of the contract shop there recently. The small shop is generally the nucleus of the sweating system in the clothing trade, though there are a good many large shops that are also operated by sweated labor, especially the so-called "American plan" shops that prominently display American flags in their employment offices, have some arbitrary bonus system and usually pay starvation wages.

On page 44 appears this:

While the evils of the home sweatshop have been mitigated, the contract sweatshop, operated by a few workers in some old loft or storeroom, is still the nucleus of the sweating system in the industry. The satellite towns of the principal clothing markets are full of contract shops that work for large manufacturers.

That is a brief statement of the contract-shop system as stated by the union.

Senator COSTIGAN. Do you intend to imply that the signers of the so-called "open letter" in the Times this morning are sweatshop operators?

Mr. CURLEE. I do not believe I made any such charge, Senator. I do not know what a sweatshop is. I was reading from union literature statements showing that the contract-shop system is conducive to sweatshop operations.

Senator COSTIGAN. In other words, you are not condemning the industrial practices of signers of this open letter?

Mr. CURLEE. The union itself has believed, and still believes, as shown from this recent publication, that the contract-shop system lends itself to abuses. I would not say that all contract shops are sweatshops, but I see the charge frequently made, and apparently the union credits it that it lends itself to that, and that many of them are.

Senator COSTIGAN. By "abuses", do you refer to low wage payments?

Mr. CURLEE. That would be one abuse, Senator.

Senator COSTIGAN. Have there been any abuses in your industry, in your own business?

Mr. CURLEE. Senator, there have been various charges brought for alleged violations of the code, but the numbers brought for violation of the minimum-wage requirements have, if any, been negligible. I do not know of any. The charges that have been brought have been for violations of the vague nebulous provisions for wages in the higher brackets, which are not capable of any rational interpretation or uniform application. I would like to elaborate on that later, but that is a fact now.

Senator BLACK. May I ask you a question before you leave that, Colonel?

Senator COSTIGAN. Before you do that, Senator, may I ask, Mr. Curlee, has your own business favored high wages, wages, let us say, above the 40 cents an hour minimum?

Mr. CURLEE. Senator, the statement has been made here that our association opposed the hours and wages proposed by the U. S. A. Association.

Senator COSTIGAN. Is that true?

Mr. CURLEE. Let me say this and lay that ghost. The U. S. A. Association proposed a code in 1933 and our association proposed a code. They asked for the same wages and for the same hours. Both

of them asked for 40 hours and a minimum wage of 35 cents. They were identical in that respect.

The code as it came out provided for 36 hours maximum and a 40 cents minimum wage.

In that connection and to get on the record straight the platform of our association, I would like to read to you just one page taken from a statement of the Industrial Recovery Association clothing manufacturers' brief filed recently before the N. R. A. This issue came up on certain proposed amendments to the men's clothing code for graduated scales in the higher-wage brackets.

Senator KING. Proposed by whom?

Mr. CURLEE. Proposed by the Clothing Code Authority. These amendments have not been passed on. They are still pending.

At this time we have this vague provision called "article 2 (d)" for wages in the higher brackets. I want to comment upon that later. There is an amendment proposed for a graduated scale.

The introduction to our statement filed before the N. R. A. is in this language [Reading:]

> On the facts herein stated, if they are correctly stated, the amendments proposed by the Men's Clothing Code Authority should be denied. If the accuracy of this statement is challenged we insist upon an inquiry. A secret investigation will avail nothing, regardless of the honest intentions of the investigator. The facts can be developed only the open production of evidence, and the confrontation and cross-examination of witnesses. We challenge the gentlemen of the other group to such an inquiry. We will agree with them in advance that all veils of confidence and secrecy may be lifted.
>
> The code authority, through its vague and various interpretations may ignore the law or apply it as it sees fit. In certain cases the Administrator has not hesitated openly to revoke the law as to certain individuals.
>
> The time has come to determine whether the so-called "self-government of industry" is to be a government of laws or of men; to determine whether freemen rights shall be determined by due process of law, or by the untrammelled will of a small group of dictators, possessing the power of economic life or death over their competitors.
>
> Wage scales have been forgotten by the dominant element in a war of conquest. If it is a higher wage they want, let them have it; but let it be a single minimum, without "tolerances" or other means of evasion. We are willing to match wages with them until there are no more consumers of the products of the men's clothing industry. Let the minimum wage be 75 cents, or a dollar, or $5 an hour. Let maximum hours be 30 or 25 or 20. Make them what you will, but let your law be uniform in its application. Let us go to our several places of business knowing what our obligations are, and not guessing at our peril.
>
> This statement is long, but no longer than the record of the wrongs it relates. Without apology for its length, we ask that the problems of an industry of an annual volume of some hundreds of millions of dollars be given at least the consideration usually accorded to a $1,000 damage suit.

Senator COSTIGAN. Has the Curlee Clothing Co. increased its wages under the code?

Mr. CURLEE. Oh, yes; I believe all manufacturers, substantially speaking, have.

Senator COSTIGAN. How much, referring to your own?

Mr. CURLEE. Fifty percent, I believe.

Senator COSTIGAN. How many employees are affected by that increase?

Senator KING. Do you mean his own?

Senator COSTIGAN. I refer to your own, and if you know, of the industry as a whole, we would like to have that figure also.

Mr. CURLEE. There are about 1,500 or 1,600 manufacturing employees. I think there are about 800 in St. Louis and 800 in Mayfield.

Senator COSTIGAN. You are referring to your own business?

Mr. CURLEE. Yes, sir; I had understood that is what you asked.

Senator COSTIGAN. Have you the figures for the entire men's clothing industry? The number affected by such increases?

Mr. CURLEE. Senator Costigan, I have done everything except commit burglary in an effort to get at those figures. Let me explain that situation, will you?

Senator COSTIGAN. Certainly.

Mr. CURLEE. Every member of the clothing industry is required to file reports showing, week by week, production, number of employees, and wages.

Senator KING. Does that apply to contract shops, too?

Mr. CURLEE. That applies to contract shops, too. Those are filed weekly on forms submitted by the code authority. It gives a complete picture. I do not know what else could be wanted. Those are secrets possessed by the Clothing Code Authority, and available to them, but the outside elements of the industry are not able to get them. We have done everything humanly possible.

Senator COSTIGAN. Were they obtained by the code authority in confidence? Is that the reason why they are not disclosed?

Mr. CURLEE. That is the alleged reason. The code provides in substance that they should be confidential and shall only be released as classified and consolidated statistics. We have asked and importuned not only the code authority but the deputy administrator in preparation for this very hearing, for those figures classified by geographical areas, Chicago, Rochester, New York, Philadelphia, and the remainder of the country. They have been denied us on the ground that it is confidential information.

Senator COSTIGAN. Would you yourself not object to a breach of confidence with respect to figures submitted by you in confidence to a code authority?

Mr. CURLEE. Senator, the fact is we did not ask for anything except consolidated figures. The code authority publishes consolidated and classified statistics when it suits its purpose to do it. When we asked for the consolidated and classified figures, we were denied those figures.

The practical situation is, and in answer to your question I would say, yes, I would object to it, and I do object to this sytem which requires it, and for this reason, that there are two elements of this industry, one about half, perhaps, or a little more, in control of it. The other part, half, perhaps a little less, on the outside. All of our data is available to them and none is available to us.

Now, on July 6, 1934, this document was signed, addressed to the Men's Clothing Code Authority:

> At the request of any one or more of the undersigned from time to time, you are directed to disclose to the one or ones requesting it, any books, records, correspondence, statistical data, and other information in your files concerning any of the undersigned. To this extent, the seal of secrecy and confidence imposed by the code is waived.

That was signed by five manufacturers. This was presented, the data was asked for and refused. It was formally presented at several times in formal hearings before the code authority.

Furthermore, Senator, the field auditors sent out by the code authority are very numerous. The statement has been made that they go and investigate complaints. That statement was made in error. They go as a matter of course to the various manufacturers and make

check-ups, getting various detailed information. They make a report. Those reports—these are presumably facts which they find—they are sent out by the code authority at any rate to find facts. A report on a given manufacturer is confidential as to him. He is not permitted to get a copy of the report.

Senator COSTIGAN. Mr. Chairman, the witness appears to me to be justified in his suggestion that there ought to be some way of giving publicity to certain facts secured in confidence, provided the facts published do not reveal individual secret data. For example, the United States Tariff Commission for many years has received confidential information as to costs of production of industries. The Commission has followed the practice of publishing costs in such fashion that individual costs of manufacturers are not disclosed, and it would appear to be in the public interest that this committee have such generalized information as will not interfere with any genuinely secret or confidential information. It is my hope that the committee will find some method of procuring this information in this general form.

Senator KING. I am not quite clear as to this matter, Mr. Curlee. What advantage or disadvantage results from the refusal of the code authority or whoever does it, to give the information to which you have just referred?

Mr. CURLEE. Senator, there are several of them. It will require first an examination of this mysterious article 2–D. I do not want to take too long in answering your question, but I think that ought to be shown anyway.

The code provides in article 2, section D, that the existing difference between the wages of the lowest pay, substantially, classes and the higher pay classes up to $30 a week, shall be maintained. At the code hearings, it was pointed out that that was not a fair and proper method of increase, that it would result in various inequities and injustices, and that it was not capable of definite interpretation.

I do not believe that the committee would care to go into the technical details of that, but it was demonstrated beyond any doubt that this was not a definite yardstick and could not be applied uniformly. The answer was constantly made by the proponents of this provision and by the deputy administrator in charge, that a committee could adjust all inequities. Our objection was to giving the code authority a letter of mark and reprisal and leaving it to a benevolent despotism to see that injustice was not done. We argued constantly there, and vigorously, that we wanted a government of laws and not of men. We objected to a vague provision and leaving it to a body of men to adjust and relieve against inequities. We foresaw what was about to happen.

Here was the purpose of this: They came out with various and sundry interpretations of this provision. Those interpretations, even, were not even made known to the trade. Some of them were retroactive in character. Just was guessing. The application of this to one manufacturer would be different from the application to another. They knew all of that——

Senator KING (interposing). You mean the code authority?

Mr. CURLEE. The code authority knew all of that and had all of this information. We did not have it. Here was a manufacturer who would be victimized—and I do not overstate it—by an absurd

interpretation of this provision. Another one, a different interpretation would be offered to him, and we attempted to find out from the original files and records what interpretations they were giving in these various other clauses. That was refused. That is one thing that can be accomplished by it.

Here is another that can be accomplished. In these proposed amendments which are now pending—the hearing was on February 1—we asked for this data that I have just mentioned, classified statistical data. It was refused us. We were told by the deputy administrator that the code authority, with the assistance of the Research and Planning Division, was preparing what they considered representative data to be presented at this hearing. When we got there, we found this representative data, this kind of representative data.

Bear in mind that everything for a whole year, they had. They did not present everything, even for any limited length of time, but for varying periods during the peak production for the eastern markets. The peak production is from July to November, and they selected certain data for certain weeks of that time, certain data for certain other weeks, and certain data covering perhaps the whole period, not consistent at all in the period covered, not consistent at all in the character of the data, and not covering the whole industry for any one of those periods, but what they called "selected representative data."

They were presented, and arguments in support of them, all being selected as being most favorable to the congested eastern markets, because they have greater peaks and valleys in their production than the western manufacturers have.

We need it for defensive purposes and as to the suggestion that the code might be amended to make that data accessible as long as this industry is run by one element of it, intent on the destruction of the other element, there is no language that can be written in the amendment that will give any relief to the subject element of the industry, in my opinion.

Senator KING. Do you mean to say that there is a clash between the eastern manufacturers and those in the hinterland, to use the expression you used?

Mr. CURLEE. Very distinctly; yes sir. The effort is very definitely made to recentralize the clothing industry in the eastern markets.

Senator KING. Do those who belong to the association with which your company affiliates; do they have their plants and their business largely outside of the four big cities that you have referred to?

Mr. CURLEE. Nearly altogether; yes sir.

Senator KING. Parden me, I do not want to divert you. You have stated one element is a little stronger than the other. Which element is the stronger? I suppose you refer to the two groups of organizations. I do not know just what you mean.

Mr. CURLEE. Senator, those statistics, if we could get them as we have tried to get them, would have enabled me to answer your question very definitely, because they will reveal exactly the production, the man-hours, and the wages. But we furnished very respectable statistical evidence at the code hearings that about 45 percent of the industry was in those four markets, and about 55 percent outside of those four markets. That was the figures from

the Bureau of the Census of the year 1929. Not conclusive evidence, but the best evidence that was available at the time.

We challenged them to produce evidence of the strength of their association. They produced not one syllable of evidence. They produced merely assertions, and the deputy administrator found that they represented I think 75 percent of the industry—65 to 75 percent of the industry—the deputy administrator reported, but there was not a syllable of evidence to support that.

Senator LA FOLLETTE. May I ask you, Mr. Curlee, you gave the figures that you submitted as 45 percent in the so-called "eastern markets", or big markets——

Mr. CURLEE. About 45 percent, I think.

Senator LA FOLLETTE. According to your information, are they members of this other association?

Mr. CURLEE. They are members of the U. S. A. Association; yes, sir.

Senator LA FOLLETTE. Can you give us any figures on what percentage of the production in the industry your association represents?

Mr. CURLEE. I can only do that in this way.

Senator LA FOLLETTE. Could you not do it on the same basis that you arrived at the estimate of the 46 percent that was represented in this other association?

Mr. CURLEE. I think now I can perhaps give a better estimate than that. There was testimony at this recent hearing of the Controller of the Code Authority that there is now employed in the industry 125,000 employees in the industry.

Senator LA FOLLETTE. As a whole?

Mr. CURLEE. The whole industry. That is shown by those reports and we will accept it as correct. I do not know. I cannot vouch for it of my own knowledge.

The members of our association employed between 20,000 and 30,000 employees. Roughly, one-fifth of the number of persons employed in the industry are members of our association. However, there is no disciplinary power to compel any independent manufacturer to join our association, so that does not include those members of the industry in the South and West who do not belong to any association.

Senator LA FOLLETTE. Could you give me any estimate of the number of employees that are outside of this U. S. A. Association?

Mr. CURLEE. I cannot, Senator, except that I know there is a very substantial part of the industry that does not belong to any association.

Senator KING. Would it be as much as 10 percent or 20 percent? It is a guess, I appreciate.

Mr. CURLEE. Yes; it would run that much, Senator. I am satisfied of that.

Senator LA FOLLETTE. Did I get the impression from one of your answers that there is some compulsory power as far as the U. S. A. Association is concerned, to force people to join?

Mr. CURLEE. Oh, yes; the power of the union. They have a very thorough discipline there. Immediately after or during the code hearings, they got in their memberships, substantially all of the shops that were unionized. I do not think that has ever been questioned.

Senator LA FOLLETTE. I got the impression that it was some power perhaps in the administration of the N. R. A. itself which you referred to, and I wanted to clear that point up.

Mr. CURLEE. No; it was not that.

Senator LA FOLLETTE. Isn't this really at the bottom a struggle between the union, the Amalgamated, and what might be termed regular organized unions, and those who in the past at least and perhaps even now, have favored open shops, and have been opposed to the organization of their industry by outside unions?

Mr. CURLEE. No, Senator; that is not the line of demarcation.

Senator LA FOLLETTE. Has it anything to do with it?

Mr. CURLEE. Let me answer that a little more fully.

Senator LA FOLLETTE. Very well.

Mr. CURLEE. The Block Co. of Cleveland has been a victim of the inquisition almost since this reign of terror started. The Block Co. is an old institution which throughout its history has been operating under a union contract with the United Garment Workers of America, and they have had hearing after hearing in Washington, not on minimums—there has never been any question of that—not on maximum hours, but over this vague nebulous 2-D.

Senator LA FOLLETTE. As I understand it, the wages of the higher brackets?

Mr. CURLEE. Continuing with the Block Co., which is a union shop——

Senator KING (interrupting). Has that been unionized for many years?

Mr. CURLEE. Throughout its existence. It is an old institution. They had a bill for alleged violation of 2-D. Mr. Scheuer came to New York to the code authority and talked it over with the staff, and he had certain equities, and they told him that his bill would be $21,000 for 16 weeks. He declined to pay that and said he did not owe it. They said: "If you don't pay that now, you will get a bigger bill when you get back home."

Senator LA FOLLETTE. Do you know who it was that made that statement to him?

Mr. CURLEE. The executive staff of the Clothing Code Authority.

Senator LA FOLLETTE. You do not know who any individual was?

Mr. CURLEE. Yes, Mr. Herwitz, the comptroller, and Mr. Drechler, the counsel for the Clothing Code Authority.

He went back home and got a bill for $37,000 for the same 16 weeks. The battle raged, and he later got a bill for $16,000 for 32 weeks, including that same 16 weeks. That bill is still pending.

That will show you the nebulous character of this. These bills have shifted up and down in the tens of thousands of dollars for the same company covering the same period.

Senator LA FOLLETTE. Are there instances of a similar character that you could give to the committee?

Mr. CURLEE. Numerous instances, Senator.

Senator LA FOLLETTE. Would you mind giving some of them?

Mr. CURLEE. I can right now.

Senator KING. While I have it in mind, who is the deputy administrator in the code for this industry?

Mr. CURLEE. The deputy administrator at the time of the original code hearings was Dr. Lindsay Rogers, of Columbia University.

Senator KING. Who is, now?

Mr. CURLEE. Later, the deputy administrator was Major Gitchell. And the deputy administrator at this time is M. D. Vincent.

I have given you the figures on the Block Co.

The Curlee Clothing Co. of St. Louis plant had a charge for $10,000 in round numbers—I will omit the hundreds—$10,000 for 12 weeks.

Senator LA FOLLETTE. Will you indicate if these are all concerned with controversies over the interpretation of what you have referred to as 2-D?

Mr. CURLEE. Article 2-D this was, sir, and nothing else. It did not concern any minimum wage.

This bill in round numbers was $10,000 for 12 weeks. Then it became $19,000 for 21 weeks. And then it evaporated into nothing.

Senator BLACK. Did you pay anything?

Mr. CURLEE. No, Senator. It was finally adjudged by the committee of the code authority that there had been compliance, and months of controversy and battling, and much auditing of the books.

In the Mayfield plant, there was a bill for $17,000, in round numbers, for 35 weeks, and after lengthy debate, that vanished into nothing.

There was against L. Greif & Co. of Baltimore, for 13 weeks, amounting to $35,000. That bill evaporated into nothing.

Senator KING. Were there controversies extending over some time before the evaporation occurred?

Mr. CURLEE. A long time, and some litigation in the United States District Court of Baltimore.

Senator BLACK. Did L. Greif & Bro., Inc.,. pay some money in December 1934?

Mr. CURLEE. I cannot answer that definitely, Senator, but I can answer this definitely, that all of this bill accrued prior to June 9, 1934, and none of it was made for any period antedating June 9, 1934.

Senator BLACK. I had information that L. Greif & Bro., Inc. did pay, and that you and Mr. Leonard Weinberg were the counsel, and that they did pay some money for violation of the wage schedule.

Mr. CURLEE. No, none of that antedated June 9, and this bill I am speaking of now was for 13 weeks, all prior to June 7, 1934.

Senator BLACK. Did they pay anything at any time?

Mr. CURLEE. They did not pay any antedating June 7——

Senator BLACK (interposing). Did they pay any?

Mr. CURLEE. I was counsel in the litigation, but I was not in the settlement. I have been informed, not from Mr. Greif but from other authoritative rumors, that he did pay something subsequent to that. What it was I do not know, and I do not know that he did pay anything. I am not sure about that.

Senator BLACK. Do you remember whether the evidence showed in that hearing, that before the code went into effect, L. Greif & Bro., Inc. had been paying a hundred of its employees less than $6 a week for a 52-hour week?

Mr. CURLEE. No, sir; I do not know anything about that.

Senator BLACK. Do you remember what it did show as to what he had been paying as a minimum?

Mr. CURLEE. No, sir; I do not. The Greenstan Clothing Co. of St. Louis was billed, $35.06, and that bill is still pending.

Do you want other illustrations, Senator?

The CHAIRMAN. Are there many others? I was going to suggest that you might put the others in the record at this point.

Mr. CURLEE. I will just summarize it then.

Senator LA FOLLETTE. I think we ought to have them in the record, so that we can look into them and inquire about it.

Mr. CURLEE. I will be very glad to put it in.

Senator KING. These are some that you have knowledge of?

Mr. CURLEE. These that I have just cited were selected at random from the country at large.

Senator KING. Are there others?

Mr. CURLEE. I have some from one market alone——

Senator KING (interposing). Are there others?

Mr. CURLEE. There are many others, yes.

Senator LA FOLLETTE. From what are you reading? From your brief?

Mr. CURLEE. Yes, sir.

Senator KING. When was that brief filed, Mr. Curlee?

Mr. CURLEE. This was filed before Deputy Administrator Vincent.

Senator KING. Recently?

Mr. CURLEE. Recently. In the matter of the hearing of the proposed amendments that I spoke of. The hearings began February 1 of this year. But in this one market——

Senator KING (interposing). What market?

Mr. CURLEE. Cincinnati. There are varying bills. Some of them at different dates, and all varying in amount. Some have evaporated to nothing, and some have been reduced to small amounts which are still pending, but there has been no possible way to apply this uniformly.

Now, as to the equities, there is a committee of the code authority which is constituted to adjust equities. It constitutes itself a chancery court. If anyone says, "This bill bears harshly on me for any reason", he goes before the 2–D committee.

Senator LA FOLLETTE. May I ask at that point, is that committee created by the code authority, from among its members?

Mr. CURLEE. Yes, sir.

Senator LA FOLLETTE. And do they have to submit that for approval by anybody or do they pass upon that, exclusively?

Mr. CURLEE. Does the code authority pass upon it?

Senator LA FOLLETTE. Exclusively without any review, is my point.

Mr. CURLEE. The code authority, as a whole, does not pass upon those. This code authority committee, called "2–D committee", passes upon it in the first instance. If they find guilt, they certify to the compliance division.

Senator LA FOLLETTE. Of the N. R. A.?

Mr. CURLEE. Of the N. R. A. That is reviewed by the compliance division. Then through that, or the administrator, pursuant to its findings, imposes the disciplinary measure.

Senator LA FOLLETTE. I do not think you understood my question, and it is not very important, but what I was trying to find out was, when they created this equity committee, as you have referred to it out of its membership, is there any review of the personnel of anyone outside of the code authority, or is that exclusively in the control of the code authority, the personnel?

Mr. CURLEE. In control of the code authority.

Senator CLARK. It is simply a committee of the code authority, is it not?

Mr. CURLEE. It is simply a committee of the code authority, yes; and all of them are from the four big markets.

Senator KING. The Hinterland has no representative on that?

Mr. CURLEE. The Hinterland has no representative on that committee, and that is a very powerful committee, and its findings are not reviewed by the code authority. Its findings go direct to the Compliance Board, and the procedure of that committee is interesting in several other ways.

A case of alleged noncompliance is brought up by a field auditor, and, bear in mind, these noncompliance cases are nearly all of those under article 2-D.

The CHAIRMAN. The committee will now recess until 10 o'clock, Monday morning.

(Whereupon at 12 m., a recess was taken until Monday Mar. 25, 1935, at 10 a. m.)

(Brief presented by Mr. Curlee in connection with his testimony, and the advertisement which appeared in the New York Times, Friday, Mar. 22, 1935, are printed in full, as follows:)

IN THE MATTER OF THE CODE OF FAIR COMPETITION PROPOSED BY THE INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS

To the Administrator of the Industrial Recovery Act:

Somewhat less than one-half of the men's, boys', and youths' clothing industry of the United States is unionized under working agreements with the Amalgamated Clothing Workers of America. This group we designate as group A. The other half consists of manufacturers operating under working agreements with the United Garment Workers of America, a labor union affiliated with the American Federation of Labor, and of manufacturers operating open shops. This group we designate as group B. Manufacturers in group A are limited almost entirely to congested labor markets, such as Chicago, Rochester, New York, and Philadelphia. (Exhibit I.) Manufacturers in group B are distributed throughout the United States, chiefly in the area east of the Mississippi, and from the Great Lakes to the Gulf States. (Exhibit II.) Distributing manufacturers in group A operate very largely under a system whereby they limit their manufacturing processes to the cutting of textiles and effect the major, essential portion of their manufacturing through contracts with the owners of numerous small shops known in the trade as "contract shops." This "contract shop" system is adaptable only to the congested areas of population in which there is a large volume of trained labor to draw upon. Practically all of the manufacturers in group B operate completely integrated plants.

Manufacturers in group A operate largely on highly seasonal peak production schedules, operating in normal times about 36 weeks in the year, with a constantly changing factory personnel. (Exhibit III.) The usual method is for the employer, when the seasonal production begins, to call upon the labor organization for as many persons as may be required. At the end of the seasonal production period, these employees are let out. Under this system there is no permanent relationship between employer and employee and no continuity of interest of either in the other.

Manufacturers in group B, on the other hand, furnish in normal times practically continuous employment in their own factories, with a relatively permanent staff of workers and with low labor turnover. There is in such factories a permanency of personnel, a continuity of employment, and a personal relationship that is unknown in the other system. (Exhibit III.)

On July 1, 1933, there were employed in group A approximately 55,000 employees. On the same date, there were employed in group B approximately 57,800 employees. (Exhibit IV.) In the peak production years of 1928 and 1929, there were employed in group A (during the period of seasonal peak production) an average of approximately 71,700 employees. During the same years

there were employed in group B (with practically continuous employment) approximately 75,000 employees.

The Industrial Recovery Association of Clothing Manufacturers (herein, for brevity, called the "Industrial Recovery Association") embraces a membership of 111 independent manufacturers, all within group B, operating plants which are nearly all self-contained units and which, as has been noted, furnish in normal times fairly continuous employment through 12 months of the year. The average age of the corporations and firms in this association, as shown by reports from the members, is approximately 25 years. The members of this association employ approximately 57 percent of the persons employed in group B. (Exhibit IV.)

There is presented here a situation without precedent in the brief history of the Industrial Administration, of two associations, each presenting on its own account a completely integrated code, in which many of the provisions in substance and effect are identical, which present divergencies in some respects, and with a very small number of divergencies in matters of substance and importance. The code presented by this association, however, deals with a number of evils not comprehended in the other. A brief statement of the facts which brought about this unique situation seems appropriate.

On or about May 21, 1933, without prior notice to the industry at large, there was held in Washington, D. C., a meeting attended by the president of the Amalgamated Clothing Workers of America and a group of manufacturers operating under a working agreement with that organization. These manufacturers are all within group A. The manufacturers attending this meeting organized and incorporated the Clothing Manufacturers Association of the United States of America (herein, for brevity, called the "U. S. A. Association"). The operating agreement adopted at this organization meeting, which every firm becoming a member of the association is required to sign, grants unlimited powers to the board of directors, in the following language:

"The association, in the absolute discretion of the board of directors, may prepare standard terms or agreements to be utilized and put into practice by every member, to cover maximum hours of work for each day and the number of work days each week, and the minimum rate of pay, and such other working conditions as may be desirable to obtain the benefits of the Industrial Recovery Act for the clothing industry.

"The members agree to accept and execute such agreements, as individual contracts; or, in the discretion of the association, to be bound by a general agreement of the association, and such agreements shall be binding upon all its members as effectively as if each had executed the collective agreement for himself.

"The member authorizes the association in the absolute discretion of its board of directors to prepared standard codes of practice which shall have the approval of the President of the United States or his properly designated representative or subordinate, to be put into practice by every member of the association, and to be a standard for every member of the association, and to be a standard for every member of the industry, and designed for the protection of the consumers, competitors, employees, and others in furtherance of the public interest.

"The association, in the absolute discretion of the board of directors, may set up a bureau of adjustment to settle all matters involving codes of ethics and proper trade practices; and in addition to the provisions for enforcement set forth in the National Industrial Recovery Act, the bureau shall work out methods for controlling such codes and practices and may establish appropriate rules in reference thereto."

The articles provided that this board of directors be composed of 21 members, of whom 18 were immediately elected.

Thereafter a publicly advertised invitation was issued to all clothing manufacturers to join. This invitation was not accepted by any manufacturers in group B.

As shown by the application of the United States of America Association, filed with its code, the members of that association are nearly all within the four great markets of Chicago, Rochester, New York, and Philadelphia.

On June 3, 1933, a meeting was held in Washington, D. C., attended by manufacturers in group B, who organized the Industrial Recovery Association of Clothing Manufacturers, in whose behalf this brief is filed. Within a week this association, in the public press and by correspondence, offered to collaborate to the fullest extent with the United States of America Association, with a free and friendly interchange of views in the formulation of a code applicable to the whole industry. This was a continuing offer and has never been withdrawn (exhibit V). The other association was unable or unwilling to accept this invitation.

Thereupon this association addressed itself to the problem of formulating a code of fair competition for the clothing industry, and of cooperating otherwise with the Administration to make effective the Industrial Recovery Act.

This activity of both associations, working on parallel lines and without collaboration, has resulted in the filing of two separate codes, which are here and now set for a joint hearing. Neither of these trade associations alone is truly representative of the clothing industry of the United States. Both together are truly representative.

At the time of the enactment of the Industrial Recovery Act there were no trade associations in the clothing industry. There were, in fact, several organizations of contract shops in different localities organized and used primarily to stabilize relations between the contract shops and the labor unions, and used secondarily in the relations between contract shops and the distributing manufacturers who have relations from time to time with the contract shops. These organizations are not concerned with merchandising methods, distribution problems, or any other of the usual normal activities of a trade association.

The Industrial Recovery Code contains some provisions designed to elevate the ethics of competitive practices (arts. VII, VIII, and IX), most of which are not included in the United States of America Code. These provisions are dealt with in a supplemental statement.

On the subjects in which the two codes concur in substance, we rather prefer the definitive legal language of the Industrial Recovery Code to the more colloquial style of the United States of America Code as being more susceptible of accurate interpretation; and we believe the form and arrangement of the Industrial Recovery Code is somewhat better. The matter of style, however, is of secondary importance.

We address ourselves to points of difference.

Contract shops.—In the clothing industry, there exists a harmful practice whereby individuals and corporations limit their manufacturing process to the cutting of textiles, and effect the major, essential portion of their manufacturing through contracts with the owners of small scattered shops, called "contract shops." These "contract shops" largely operate on highly seasonal, peak production schedules on a minimum of invested capital, and with a minimum responsibility to labor for the maintenance of continuous employment. In Bulletin No. 557 of the Bureau of Labor Statistics of the United States Department of Labor, published in January 1932, entitled, "Wages and Hours of Labor in the Men's Clothing Industry—1911 to 1930", it is said:

"In the men's clothing industry there are usually two busy and two dull seasons in the year. The busy seasons are in midsummer and in midwinter. Clothing for fall and winter wear is made in midsummer, and for spring and summer wear is made in midwinter. In some shops there is a fairly uniform amount of work throughout the year; in others, the work fluctuates materially. The fluctuation is more in contract than in other shops. Some contract shops close down during the dull season, and others operate with reduced forces, or at less than the customary hours per day and per week."

This practice has created a competitive condition grossly unfair to those established manufacturers who own completely integrated factories, maintain sales organizations, and assume the burden of protecting stable investments and of providing continuous employment of labor. The operation of such shops has made for sporadic, seasonal employment of labor, has depressed prices, and has resulted in the demoralization of the clothing industry. It is a growing evil. That the immediate prohibition of this practice would require too rapid a readjustment of existing methods must be recognized. But the growth of the evil should be immediately arrested, and the "contract shop" method of manufacture ultimately prohibited. To this end we recommend (and in our letter of application accompanying our proposed code, so recommended) to the administrative and advisory agency that investigation be made of the "contract shop" evil and that, if it is found that the facts support the conclusions herein submitted, the following section be added to the code:

"Section—. From and after the —— day of ——— each manufacturer shall, in his own shops, plants, or factories, perform all of the manufacturing operations necessary for the conversion of textiles and/or fabrics into finished garments."

The United States of America Code is silent on the subject of contract shops.

Outside or home work (Industrial Recovery Code, art. IV, sec. 3; United States of America Code, art. III, par. (d).—Both codes condemn this practice. (Exhibit VI.) The Industrial Recovery Code makes the prohibition immediately effective. The United States of America Code allows a period of grace of 1 year. This is

a vicious practice and all agree that it should be utterly stamped out at the earliest possible time. The practice lends itself to evasions and abuses, and is destructive of the reforms contemplated by the Industrial Recovery Act. If, however, an immediate reform is so revolutionary a shock to established methods as to make immediate readjustment impossible without a loss incommensurate with the benefits to be obtained, we make no objection to the 1-year period of grace for the required readjustment.

Sales below cost of production (Industrial Recovery Code, art. III, sec. 3; United States of America Code, art. IX).—Both codes prohibit sales below cost, with a certain latitude for the disposal of discontinued lines, seconds, etc. The practice of selling below cost of production causes demoralization and distress in the clothing industry, and should be corrected. The practice has not been limited to the disposal of obsolete items, but manufacturers have gone so far as to contract in advance for sales below cost in order to keep up production and reduce overhead, and for other reasons. This practice may be profitable at the moment for an individual manufacturer, but is demoralizing to the industry as a whole, and in the long run unprofitable to the individual who practices it.

The United States of America Code goes into more detail with respect to this abuse, providing for a uniform cost-accounting system applicable to the entire industry, and also providing that obsolete merchandise, with certain exceptions, may be sold at less than cost only with the approval of the administrative agency. We believe that, until further experience is accumulated, a simple prohibition is the better method. If there are abuses or evasions, means can be devised in the light of experience to circumvent them.

We doubt the wisdom or necessity at this time of providing for a uniform cost-accounting system. Such a system will not be indetical with the actul costs of the individual manufacturer, and may require an onerous duplication of bookkeeping methods as in the case of the railroads, which have to keep two sets of books, one to fill the requirements of the revenue laws, and the other of the Interstate Commerce Commission.

Also, we doubt the wisdom of requiring as a condition of a sale of distress merchandise the approval of the administrative agency, composed as it is of competing manufacturers who may have an economic interest adverse to that of the manufactuere affected.

The limitation of surplus production contemplated by the National Industrial Recovery Act gives reason to hope that such abuses may be automatically self-correcting, without the erection of machinery which would certainly be onerous and might possibly be oppressive. If such abuses persist and the machinery is necessary, it may later be and should be erected. Our only argument in this respect is that simplicity is desirable where it is adequate, and complications and refinements should be added only when their necessity is reasonably demonstrated by experience.

Increased work or production on the part of employees.—*(United States of America code art. II, par. (d)).*—The United States of America Code prohibits increases in the amount of work or production required of employees over that normally produced prior to July 1, 1933, unless such increases are approved by the administrative agency. The Industrial Recovery Code contains no such prohibition. This provision is evidently designed to follow the precedent in the Cotton Textile Code. In that industry it is charged that there has been for many years a well recognized and definite abuse known as the "stretch-out" system, pursuant to which the number of machines the individual operator is required to attend may be increased beyond the reasonable endurance limit of the operator, or pursuant to which the speed of the machines may be increased and too great a burden imposed upon the operator in adapting his working speed to the speed of the machine. In those cases, the abuse to be corrected was the imposition upon the individual worker of an unreasonable burden of definite requirements. At the time of this writing the report of the committee of the cotton-textile planning agency investigating the "stretch-out" system has not been filed. When that report is made available, it will shed more light on the peculiar conditions in that industry which required such a provision. The nature of the clothing industry does not admit of such abuses and there is therefore no necessity for the corrective measure. Most of the work in the clothing industry is paid for on a piece-work scale in which the speed of the operator is determined for himself by his own skill, diligence, and ambition. (Exhibit VII.) It is difficult to see how this prohibition can be applied specifically to the clothing industry. It is easy to see that it would result in the raising of a multitude of minor issues, complaints, and bickerings, resulting in unnecessary grievances and reduction

of production. Every technological development by which more production can be had in relation to man hours, even without the imposition of any additional burden of labor upon the employee, would be productive of endless dissension. Although production has outrun purchasing power, we believe it to be the aim of the administration to correct this evil without the arrest of technological development.

Cut, make, and trim problem (Industrial Recovery Code, art. VI; United States of America Code, art. XI (b), (1), (2), (3), (c).—The Industrial Recovery Code aims at the absolute prohibition of this evil, in the following language:

"The manufacture of garments from fabrics, trimmings, and/or other materials owned or supplied by a retail distributor, or the agent, representative, or corporate subsidiary or affiliate of such retail distributor, is prohibited. The manufacture of garments from fabrics, trimmings, and/or other materials the purchase of which is made upon the credit of, or the payment for which is guaranteed by, such retail distributor, or the agent, representative, or corporate subsidiary or affiliate of such retail distributor, is prohibited. This section shall not prohibit the operations of retail distributors owning and operating their own plants, shops, or factories who distribute products manufactured therein directly to consumers."

The United States of America Code deals with the problem as follows:

"(b) There has developed in the clothing industry a pernicious practice on the part of a certain class of distributors to manufacture clothing without the usual responsibility and obligations that a producer in the industry owes to labor of giving labor decent hours of work, fair wages, and sanitary working conditions. A distributor by exerting price pressure on these operators forces the price of labor down to a point which has become a menace to the industry and labor. This is accomplished by: (1) The distributor buys the cloth and farms it out to fly-by-night and irresponsible persons who carry no annual overhead and who shift their plant from place to place, making orderly supervision of hours of work, wages, and sanitary labor conditions in their plants impossible. The cloth is cut by these irresponsible contractors, trimmed, and made up into garments. This evil has grown and threatens the legitimate distributor and producer and is known as manufacturing on a 'cut, make, and trim basis.' (2) The establishment of credit by the distributor for the benefit of the so-called 'manufacturer' with the woolen mills so that while in theory the goods are charged to the manufacturer they are in fact purchased and paid for by the distributor or with money advanced by the distributor to the manufacturer with which to pay for such merchandise. (3) Or any subterfuge which results in a contract for manufacturing on a 'cut, make, and trim basis' are unfair practices.

"(c) The foregoing provision shall not be construed to prevent a retailer from selecting or ordering any cloth for the account of a manufacturer but the cloth so ordered or selected must be paid for by the manufacturer, and the price for which the cloth was purchased must be included in the cost of the completed garment, subject to the uniform cost-accounting practices provided by the code."

We concur in this well merited denunciation of the evil. But in the light of it, the concluding paragraph (c) is difficult to interpret. The second of the enunciated evils is the lending of the retail distributor's credit to the so-called "cut, make, and trim" manufacturer. The concluding paragraph (c) would permit the ordering of cloth by the retail distributor and would encourage the very evil inveighed against. Under any interpretation it would seem to leave the "cut, make, and trim" evil unaffected.

Collective bargaining (Industrial Recovery Code, article IV, sec. 4. U. S. A. Code, art. XIV).—In the Industrial Recovery Code there have been added to the mandatory language of section 7 (a) of the act the following sentences:

"Employees, members of any labor union, shall be free from interference, restraint, or coercion by any other labor union, its members, or agents. Employees not members of a labor union shall be free from interference, restraint, or coercion by any labor union, its members, or agents. Employers and employees may bargain individually or collectively as may be mutually satisfactory to them."

Criticism has been made of this additional matter on the ground that the words "interference" and "restraint" are indefinite. The answer might be made that if those words are vague as applied to the additional matter, they are equally vague in the mandatory language of the statute (exhibit VIII). We prefer, however, to make a different answer, and therefore request that the words

"interference" and "restraint" be deleted from the added matter, so that article IV, section 4 shall read as follows:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing. Employees, members of a labor union, shall be free from coercion by any other labor union, its members, or agents. Employees not members of a labor union shall be free from coercion by any labor union, its members, or agents. Employers and employees may bargain individually or collectively as may be mutually satisfactory to them. Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

Industrial peace and coercion are utterly incompatible. The act gives full recognition to the right of labor organizations to advance their interests with freedom from interference, coercion, or restraint by their employer. This is interpreted by some organizations as giving them the right to advance their interests through coercive measures. The prohibition of all coercion by whomsoever practiced would clarify the meaning of the act and would act as a deterrent to turbulent and disorderly elements.

Advanced Scales of Wages (Industrial Recovery Act, Article IV, sec. 6. United States of America Code, Art. II.—Both codes propose a minimum wage of 35 cents per hour in the North, and 32½ cents per hour in the South, and both provide a maximum of 40 working hours a week. The subject of maximum hours and minimum wages are dealt with in our supplemental statement. We limit ourselves here to discussion of increases in the higher-wage brackets.

The United States of America Code provides a minimum wage to cutters of 80 cents per hour. We can perceive of no reason for singling out cutters as a specially favored class as distinguished from other shop employees in the higher-wage brackets.

The general increase in wages proposed in the United States of America Code (hereinafter mentioned) is applicable only to workers receiving less than $30 per week. We are unable to see the reason for this limitation.

The chief point of difference between the two codes is in their methods of accomplishing a general wage increase applicable to those grades above the minimum wage.

The United States of America Code provides that existing amounts by which wages in the higher-priced classes exceed wages in the lower-priced classes, shall be maintained.

The Industrial Recovery Code provides for a minimum horizontal increase of 20 percent in the earnings of all classes of employees over and above the rates effective July 1, 1933, without diminution because of reduced working hours.

Whatever method may be adopted for increasing wages in the higher brackets, it seems clear that the method proposed in the United States of America Code is harsh, unjust, and inequitable, imposing substantial general increases on manufacturers making the lower-grade garments, and imposing no general advances on manufacturers employing the more skilled workers and making the higher-priced garments. The products of the manufacturers subject to the code range all the way from those retailing at $65 per suit for the more prosperous class of consumers, down to those retailing at less than $10 per suit for the poorer class of consumers. Such an unequally imposed increase in production costs would leave unaffected the prosperous consumer and bear harshly upon the poorer consumer of the cheaper merchandise. If there is to be an inequality in the production costs such inequality can be more easily borne by those of the more prosperous classes than by the poorer classes.

With regard to the interest of the manufacturers, a slight increase in the higher priced garments would not materially diminish consumer demand, while a slight increase in the price of cheaper garments would appreciably diminish consumer demand. Any substantial increase in consumer demand would be attended with resulting unemployment.

Furthermore, the proposed method of increase would affect unequally many competing manufacturers in the lower grades. Some manufacturers in the lower grades have established minimum wages and have refused to continue the employment of persons who on a piecework scale could not earn the minimum. Other

manufacturers with equal or comparable piecework scales and average earnings have established no definite minimum wage levels, but have permitted the retention of persons in their employ who because of lower abilities are unable to earn a reasonable minimum wage. Some manufacturers have maintained a shop discipline that requires all employees to exert themselves to the reasonable extent of their several capacities. Others, with the same or comparable piece-work scales, have left the matter of earnings to the ambition of the worker. Some have retained superannuated employees whose productive capacities are seriously diminished. The application of this formula therefore among competitors of the same price class and with the same or comparable piecework rates and average earnings would be to impose upon some substantially higher wage scales than upon others.

Manufacturers of the highest-priced garments and manufacturers of the lowest-priced garments are competitors indirectly to the extent that any important change in prices at either extreme has its effect on the whole range of prices. Regarding all classes of manufacturers as competitors of each other in this limited sense, any violent change in the competitive position of one group not affecting the other, would impose an inequitable hardship.

The last few years of distress have eliminated the unfit in all lines and have shaken down the surviving manufacturers into a state of competitive equilibrium. They have survived, but none have prospered. Any violent disturbance of this economic equilibrium would be disastrous to the less favored class.

There are many competitive advantages to the manufacturer in a great market. He has a large reservoir of trained labor to draw upon. He is enabled to a considerable degree to await demand, and by high pressure seasonable production, meet a known demand. On the other hand, the manufacturer in the South and West must produce and store his product in anticipation of an undetermined and unknown demand. It is a well-known fact among all clothing manufacturers, though not susceptible of statistical proof, that the productivity per man-hour is greater in the large labor markets than in the more remote sections of the country.

The manufacturer in the great markets enjoys many other advantages. The manufacturer in or near New York, for example, has at his door a consuming public of many millions of people. New York is the country's great mart for the purchase and sale of commodities. The manufacturer in the South and West must cover the country, or his section of it, with traveling salesmen. These competitive advantages of the great markets are partially offset by the different method of manufacture and lower gross cost for materials and labor which enable the manufacturer in the West and South to manufacture low-priced garments at a sufficient gross profit to absorb these handicaps. If this offset of the latter class is destroyed or seriously diminished, the inevitable result will be the extinguishment of large numbers of them and the concentration of production in the large markets. It will also mean that the poorer members of the consuming public will be compelled to pay more for their clothing, while the wealthier consumers are left unaffected. The good or ill of the concentration of production in congested centers is a mixed question for the economist and the sociologist. We doubt that the stimulation of such concentration is an end desired through the medium of the Industrial Recovery Act.

In the matter of wage readjustments, there are two separate and distinct purposes. One is to insure to each worker a decent living wage. This is accomplished by the minimum wage scale. The other purpose is to increase wages generally, as quickly as possible, so that the purchasing power of the masses may keep step with advancing prices. This latter purpose will be best served by a horizontal increase in wages applicable alike to all classes of manufacturers and to all classes of labor. We earnestly protest that, if at this time, and in haste, an attempt be made by wholesale method to readjust supposed competitive inequalities, the result will be disastrous.

Administrative machinery (Industrial Recovery Code, art. X; United States of America Code, art. XIII).—The United States of America Code proposes that the executive committee of the United States of America Association be invested with all of the power and all of the responsibility of the self-control of the clothing industry.

The Industrial Recovery Code proposes an administrative and advisory agency with ample powers. This agency is to consist of 5 members to be elected by the Industrial Recovery Association, 5 members to be elected by the United States of America Association, and 1 member to be appointed by the National Industrial Recovery Administrator, who shall be chairman. The machinery proposed by the Industrial Recovery Association is not the product of inspiration, but is closely

patterned and adapted from the procedure of the Federal Trade Commission (exhibit IX). If it be deemed desirable to have labor representation on the administrative and advisory agency, we suggest the propriety of having two members added to the personnel of the proposed agency, one to be designated by the Amalgamated Clothing Workers of America, and one by the United Garment Workers of America, affiliated with the American Federation of Labor.

The code cannot be properly administered unless the administrative agency is truly representative of the industry. The methods of manufacture and the character of the product of the two groups represent substantially different branches of the same industry. In addition to the distinctions already made, the manufacturers in group A produce chiefly what are known as "style garments," largely by hand work, and employing men tailors. The manufacturers in group B employ chiefly women, produce mainly staple products by standardized machine processes, in a relatively great number of simple, single operations, and sell their product in the lower price range.

With two branches of the clothing industry clearly distinguishable in labor relations, in methods of manufacture, in price range, in geographical distribution, with competitive, conflicting interests at many points, represented by two trade associations, it would be unreasonable to give either a preponderance over the other in the administrative machinery. It would be preposterous as proposed by the U. S. A. Association to give either of them the whole administration.

Conflict of competitive interests does not necessarily imply hostility. It is the aim of the Industrial Recovery Act to maintain competition, but to elevate it above the law of the jungle. If, however, hostility should exist and persist, there is added reason for an equal balance of power and responsibility in the administrative agency. Such an agency, in the sole possession of one group, would exercise the power of life and death over the other. This agency is charged with collecting, filing, and digesting vital statistics from all manufacturers. It is charged with the responsibility of recommending amendments or additions to the code. It is the sole liaison agency between the administration and the industry. It is charged with the duties of investigating violations of the code, and with tremendous punitive powers. A partisan agency would regard with indulgence destructive practices in its own group, and would display a relentless crusading spirit toward real or imagined improper practices in the less favored group. It would be difficult for the U. S. A. Association alone to deal with the "cut, make, and trim" evil, consisting, as the association does, so largely of the operators of contract shops. We say this in no spirit of criticism, but with a plain recognition of realities. It would be equally difficult for group B to deal adequately with its own evils, and tolerantly with the evils of the other group.

It is to be hoped that the time will come when there will not be two opposing groups, with conflicting interests; but one group, working in common toward a common end. The history of these two associations unhappily demonstrates that that time has not yet arrived.

If industrial strife and violations and disorder are to be the rule, if the fierce compctitive struggle of recent years is to be transferred to a new arena and become a competitive struggle for the favors of the Administration, if opposing groups regard each other with hostility and suspicion, improvement is not to be expected. When, on the other hand, industrial peace can be substituted for industrial warfare; when competing business men can sanely and temperately, and with mutual respect and confidence, discuss their problems, and plan for betterment; then—and only then—with the sympathetic aid and cooperation of the Administration, can they govern their industry wisely and sanely, and produce order out of chaos.

INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS.

[Advertisement in New York Times, Friday, Mar 2, 1935]

AN OPEN LETTER BY THE SMALL BUSINESS MAN

To the Congress of the United States:

We are some of the small businessmen of the country who address you in person and ask you to renew the National Industrial Recovery Act.

We have not authorized the Curlees on the one hand, nor the Darrows on the other to speak for us and do not consider them qualified to do so at any time.

The Industrial Recovery Association is composed of large clothing manufacturers. It will be interesting to note that three names, i. e., Curlees, Schoeneman, and Greif, that appear on their letterhead under column entitled "Officers",

employ more workers than the first 300 names appearing below. This association, of which S. H. Curlee is president and F. M. Curlee is general counsel, at public hearings in Washington in July 1933, demanded in a printed brief the complete extinction of the "owners of small scattered shops" who "operated * * * on a minimum of invested capital." They have "created a competitive condition grossly unfair to those established manufacturers" who "assume the burden of stable investments."

This very same association and their very same mouthpiece assisted by paid lobbyists now raise pious voices in behalf of the small businessman.

We have an abiding faith in our Government and its institutions. We have an abiding faith in the judgment and integrity of our lawmakers. We earnestly pray to you in behalf of our families, in behalf of the preservation of our institutions, which we cherish, that you renew the National Industrial Recovery Act, so that we and our families, and the workers in our shops and their families, may not again be thrown on the breadlines, from which many were rescued by the enactment of the National Industrial Recovery Act.

Most respectfully,

Baltimore, Md.: 73 establishments, employing from 20 to 175 workers; average per establishment, 50 workers. Names of employers: P. J. Adams, H. Berlin, Buschoff & Gordon, J. Dragonia, A. Janis, S. Levin, K. Pikis, Sapperstein & Nasura, Uginsky & Adams, J. Yoncha, H. Berman, L. M. Bressler, H. Engel, Hyman & Cohn, T. Magowski, H. Millman, A. Press, W. Samett, P. Sojka, W. Atschul, H. Bass, S. Gorn, Leon & Skuinick, M. Rosinsky, N. Tenainow, T. Arcilese, Berman & Sapperstein, B. Cohen, Dvorak Bros., F. Mercaldo, Perry Talvacchia, A. Rakowsky, A. Shapiro, United Tig. Co., Youch & Youch, H. Baddock, A. Contract, H. Epstein, M. A. Katzen, M. Mandel, J. Mefosky & Sons, P. Rosenberg, H. Sherr, J. Taylor, Astrin Bros., M. DeGioriano, L. Klavens, J. Messick, M. J. Scheurich, J. Benesch, A. Bradunas, V. Corruze, G. Gabriel, H. Oscheroff, C. Piccinine, V. Razauskas; Smuckler, Sisco Abelson; A. Uzmed, Albert & Lesser, M. Baer, M. Dembroski, H. Gold, L. Leiderman, J. Morawski, E. Paul, S. Rubin, H. Skolnick, L. Weber, Blum & Pomerants, M. Friedman, S. Leavey, A. Mossovitz, Smoth & Valls.

Boston, Mass.: 23 establishments, employing from 18 to 100 workers; average per establishment, 48 workers. Name of employers: Allen J. Broide, F. Cohen Bros., S. Cohen, Covitz Bros., E. Dantovitz, L. Fein, M. Finkelstein, D. Glazer, H. Kaufman & Marcus, Laurino Bros., Leone G. Lipsom, A. Newman, M. Plotinsky, R. Lucas, F. Rich, F. Richman, L. Rinsman, M. Shinis, J. Schiller & Brown, Skertson B. Soloway, Halzel Tarantion, A. Weiner, N. Wyman.

Cincinnati, Ohio: 18 establishments, employing from 6 to 125 workers; average per establishment, 45 workers. Name of employers: Peter Blum, L. Gerriz, F. McGrath, Nick Carravillans, Hessler Tir. Co., Dave Soal, E. Dieckmann, A. Hochscheld, Trotto & Dellecasve, Leo Dirr, Krein Bros., George Wirth, Jos. Esselman, A. Korelitz, Dave Ostand, George Friesz, John Lauerman, Anton Link.

Chicago, Ill.: 93 establishments, employing from 10 to 120 workers; average per establishment, 41 workers. Names of employers: E. Abruzzi, A & B Pants Co., P. Allevato, Anderle Bros., Armatos Pants Shop, Vito Baguolo, Bell Pants Co., J. Bennett, I. Berger, Berger & Ragofsky, Berkowitz & Goldman, B. Biegel, C. Bohatee, Frank Boucek, L. Bruno, Andrew Bulka, Bulka & Co., Buonamici & Delbello, Romeo Calvares, Chicago Pants Co., City Coat Makers, Coat Makers Corp., Cooperman & Shifress, J. Cosentino, Sam Cosenza, Czuba Brothers, N. A. Davis, Deverne & Fume, M. Diamond, Economical Pants Co., J. Ehrensaft, Elmwood Railors, H. Eminger, Excel Coat Makers, Friedman & Becker, I. Goldberg, J. Gooder, Guaranteed Coat Makers, Henry & Janovity, Henry Trouser Shop, Herbstman & Haltzer, Herman & Rosenthal, Independent Pants Tailors, Frank Jacobson, M. Johnson, W. Kahn, Isaac Kelpak, Kosky & Karon, J. Koss, Ben Levy, Ike Lewis, J. Lobello, W. Lompicki, Sam Lopshitz, Mandelson Bros.,

Mansowitz & Carman, M. Markin, Micell & Sacks, Modern Clothing Manufacturers, Modern Coat Makers, G. Montinelli, Joseph Morozoff, O. Opietal, Peterson, Carlsten & Halquist, J. T. Peterson, A. Piemonte, Roosevelt Vest Shop, Rosen Brothers, Rosen & Kosover, Schatz & Lewis, Schwartz & Marro, Service Coat Maker, Shafer & Swensnik, George Shapiro, Shepherd Tailors, Siegle & Siegel, S. Silverman, John Sima, Frank Spevak, State Vest Shop, Fred Strauss, Turman Pants Co., J. Tiapa, U. S. Comton Pants, Vesecky Bros., A. T. Vikander. Louis Vondrak, Vyleta & Rusha, Frank Wilcek, Yagodnik Pants Manufacturers, K. Zalewski, H. Zuckert, Zipperstein & Leavitt.

New York City, N. Y.: 458 establishments, employing from 8 to 240 workers; average per establishment, 59 workers. Names of employers: A. & G. Clothing Co., Abbatte Coat Contracting Co., Abraham Bros., Sol Adamo, Admirable Contractors, Inc., S. Advocat, Ajax Contracting Co., Alabama Clothing Co., Aleprondo & Pagano, R. Alvaro, Amsel & Frand, D. Andreana, Ankuta, Zwariko & Zuewsky, Appleman & Soopinsky Augunas & Co., B. & B. Pants Co., B. & G. Clothing Contractors, B. & Z. Clothing Co., Barbano & Co., Bastchuck & Dobzetski, M. Becker, Belluck & Fisher, Berger & Kaminsky, Bergman & Hyman, Werland & Felt, Bezman, Salts & Suskowitz, P. Bloise, Blum, Orlich & Stevenson, Bridge Trading Co., Broadway Clothing Corporation, N. Brodin (Jefferson Coat), C. Brodsky, Brooklyn Vest Co., Brown & Markowitz, E. Bonelli & Co., M. Brust, V. Bucarro Bros., Burstein & Gumer, Buscend & Seimonelli, Buskwick & Co., C. B. C. Coat Contractors, V. Cacciatore, Calabria & Son, Caress Vest Shop, Carroll Coat & Vest Contractors, Casale & Bro., C. Ceinick, Central Pants Corporation, Ciporin Bros. & Chopokwitz, B. Cohen & Son, Cohen Bros., Nathan Cohen, Reuben Cohen, Cohen & Rubenstein, Cohen & Eisenberg, Cohen & Schneider, Colosanto & De Majo Inc., Commercial Trading Co., Congelosi & Alongi, J. Constantion, D-Cusati, D. & D. Coat Makers, Phillip Dann, Davis & Fishman. Dekwill Clothing Co., DeLeo & Sons, U. D'Elleto, Albert De, Viscovo, C. DeStaslo, DeVincenza & Yula, Dewey Clothing Co.1 DiGeralmono & Co., DiGiovanni Bros, A. DiMera, DiPleco, Pernetti & DeCesare, Dirzis & Armak, A. Duboff, Dubofsky &, Novick, Dunay & Pollack, J. Durst, Eagle Pants Co., A. Eckhouse, H. Elstein, Sol Ettinger, M. Evangelist, Inc., F. S. & W., M. & S. Freedrico, P. Federico & Co., Feigert & Landesman, Feinman-Frand Co., Louis Ferber, Ferraro Bros., S. Finkelstein, F. Fisher, Fogel & Silver, Fortgag & Sank, Fourwheel Coat Contractor, Frazzitta & Frellich, I. Fried, S. Friedfartig, M. Friedman, L. From, A. Fromberg, Frommer & Weisgras, G. & D. Manufacturing Co., G. & M. Pants Co., J. Galmari, H. Ganz, Geilberg Bros. & Hirsch, General Trading Co., S. Giordano, L. Giovinco, A. Goldberg, S. Goldberg, Goldberg & Horowitz, Golden & Son, Goldman & Son, Goldstein & Amedio, Gordon Coats, Inc., Greenblatt & Diamond, Greene Tailors, Greenhut & Radwin, Greenspan & Lashar, Joseph Gross, H. Grossfield, Grusha Bros., Gulant & Maslin, Gusotzkis & Siventovaldis, H. S. Vest Co., Harlem Pants Co., Harrison Clothing Corporation, Henner & Meyers, Hornig & Blei, Hy-Grade Coat Shops, Inc., Idla Pants Co., Irwin & Lazarowitz, J. & V., M. Jacob, Jacobs & Feldman, Jaffee & Uhrland, Jasphy & Schoenfeld, Jefferson Vest Co., Jonas & Satofsky, D. Joselow, Joseph, Kootz & Resnick, Julian Clothing Co., Junius Clothing Contracting Co., K. A. W. Clothing Co., K. M. R. Clothing Co., J. Kaiser, Kanner, Karp & Gisser, S. Karvelis & Co., Kasper & Karel, Sam Katz, Kaufman & Hoffman, Kaupas & Budraitis, Keeve & Solomon, J. Kevitz, Kimmel & Hertling, Max Kirmayer, B. Kotkofsky, Kotler & Wolf, Kott & Dubianowicz, Krause Bros., Morris Krescloff, Kronenberg & Weiss, Kulick Bros., L. & A. Clothing Co., L. B. Trouser Co., L. & F. Paints Co., Marco LaBarbera, L. Labiento, Ph. Lamb, J. Lampner, J. Landan

Lapash & Co., D. Lapayower, Lauterstein & Markman, Leder, Walofsky & Hollander, S. Leicher, Lerner & Greene, D. Levine, Harris Levine, Morris Levine & Son, Levnat Clothing Contractors, S. J. Levy, Levy & Munder, Levy & Rosenfield, J. Lipman, Litzsky & Itzler, Lozousky & Karonik, A. Ludwinsky, Lukevich & Selewonchik, Luna Clothing Co., Madewell Pants Co., Maduri & Co., Maltz & Maltz, Ben Sobel Co., Inc., Sokol, Ruck & Cohen, Solomon, Goldstein & Portney, Solomon & Kosak, Spector Bros., Spilton Bros., A. Spring, R. Sprung, Star Coat Makers, Stauber & Schweitzer, Stillerman, L. Strassburg, Sucher & Lerner, Sullivan & August, Supreme Clothing Corporation, Supreme Coat Makers, Suydam Pants Co., Taravella Bros., Teiteler & Auster, Thirfeld & Hirsch, Inc., Three Mark Coat, Inc., N. Travigila, E. & L. Trotner, Turkeltaub, Meyer & Yadofsky, Two G's Coat Shop, Vaeret Pants Co., Varnis & Brusak, Vicale & Frederico, Victory Tailoring Co., H. Vogel, Walgin & Matulis, Waldman & Kellner, Wasserman & Gimbel, Wasserman & Kotak, M. Weschler, Weinberger & Riger, Weiner & Feldman, Weinmann & Klein, H. Weinstein, D. Weiser, S. H. Weiser & Son, Weisinger & Weitzenbuth, J. Weiss, Well Tailored Clothes, Inc., Werfel Corporation, J. Winter, Wolf & Manelis, Woodbine Borough Clothing Co., Yahalem & Shapiro, S. Wolinsky, Uskevich, Yasus & Patap, Zagare & Caminiti Co., Zalewski & Ribas, F. P. Ziegler, Zimmerman & Wolf (Ridgewood Vest), Zilinsky, Stankewitzsky, & Wyshruff, Zwariko & Samenko. Atlantic K. P. Co., S. Alexrod, M. Bernstein, J. R. Blandl, Bleecker Manufacturing Co., N. Bonies, Bernstein & Chibnik, Chatham, K. P. Co., Inc., Cohn's Clothing Co., Courtlandt K. P. Co., East Boradway K. P. Co., Mercer K. P. Co., Middletown Knicker Co., National Knee Pants Co., New Brighton K. P. Co., Osborn Pants Co., Pacific Knee Pants Co., R. & S. Manufacturing Co., Richmond Knee Pants Co., Isidore Rim, Rosebank Pants Co., I. Rosenblat, Abe Rosenthal, Royal Knee Pants Co., Scadell & Fusco, Schmookler Manufacturing Co., S. & B. Pants Co., Lazar Seltzer, Simon & Finkel, Singer & Levine, Smart Set Manufacturing Corporation, Frank L. Spina, Stanton Knee Pants Co., Elizabeth K. P. Co., Ettinger & Seltzer, Ch. Farro, Inc., Nathan Finkel, Morris Geller, G. & H. K. P. Co., Ch. Giarratano, Joseph Gramer, Harry Greenberg, M. Handelsman, Hudson Pants Manufacturing Co., Louis Sternlieb, I. Teitlebaum, H. Treiber & Son, Sam Umansky, Uniform Made Trouser Co., Wash. Knee Pants Co., D. Weisman, Weiss & Curatola Pants Corporation, Weiss Clothing Co., Inc., Williamsburg Knee Pants Co., Woodbine Borough Clothing Co., Zamore Bros., David Fenichel, G. & W. Pants Co., Inc., P. H. Gottesfeld Pants Manufacturing Co., Gottsegen & Kaufman, New Haven Pants Co., Indep. K. P. Co., Kassner Bros., Kaufman Bros., Klar & Schiller, Kramer, Broky Co., M. Karsner, G. La Fata, Lafayette K. P. Co., Levy & Feinman, Max Levy, Morris Levy, Bangor Clothing Manufacturing Co., Bangor Pants Co., G. R. Beidler, Coopersburg Clothing Co., R. M. Croughamel, Allen S. Drissel, Easton Trouser Co., Frank Eyre, Felman Pants Co., Fishman & Marion, N. Kasover, C. L. Lutz, H. D. Maurer, Modern Pants Co., Northampton Pants Co., Inc., Herman Oritsky, Pennsburg Vest Manufacturing Co., P. A. Specht, Strongwear Pants Co., E. Webster Strouse, Supreme Pants Corporation, Mandelbaum & Konner, Manhattan Pants Co., Mann & Greif, Marco & DeLuca, F. Mariono, Melville Coats, Inc., Messina Bros., H. Meyerson, Mezlis & Shimaits, Miller & Kaplan, Max Mirsky, Mitchel & Karis, Moda Coat Co., Modern Clothing Co., G. Mondshine, Montelbano & Son, Monteleone & Adama, Frank Morrissano, A. Moskowitz, Myrtle Vest Co., G. Naclerio, S. Newman, New York Coat Tailors, Mike Nunzlante, M. Oberlander, Harry Ost, Orlofsky, P. J. & S. Coat Makers, P. & S. Tig. Co., Pacific Clothing Co., Pack, Schneider & Teitier, Frank Palma, Angelo Pascale, D. Passarello, Pastore & Son, J. Pastor, Pensack Bros. & Krishenbaum, Perlman & Levine, A. Perlovitz,

Persico Bros., Petrone & Gaudiano, Pipitone & Gutstein, Pivar & Feldman, Plotzker & Stellar, Polito & Menta, G. Ponti, Popular Clothing Co., F. Shikler, M. Shott, H. Siegel, M. Siegel, Siegel Block & Balofsky, Siegel & Krantz, Silberstein & Yanofsky, Silverstein & Fishman, R. P. Clothing Co., Radel & Lasio, Randozza & Atria, R. Rea, Frank Reggio, J. Reiss, G. Restivo, Wm. Rinl, B. Rodkewich, S. Rodman, M. Rosenberg, Rosenberg-Sweet Co., H. Rosenkrantz, Roshkind & Karpeschuck, Rossi Bros., Roth Bros., Roth & Fisher, Rothman Pants Co., Morris Rozin, Rubin Bros., Rubin & Wollnitz, S. R. S. Coat Makers, S. Z. & F. Co., Sabel & Schapps, C. Sabione & Co., Sadowsky & Zarnowitz, Saft & Brog, Sakowitz & Adler, B. Saltz, Vincent Santoro, S. Savitsky, Sazeler & Adler, Sazeler & Smith, J. Scala, Schaikowitz & Scherr, Schiffer & Skonik, Schindlinger & Cohen, Schoenberg & Lenobie, A. Schoenfeld, Schreir Bros., Schreck & Blumenreich, B. Schwartz, I. Schwartz, Schwartz & Gaucher, Scientific Coat Con., Scuirba & Domandi, C. Seidenfrau, Louis Shaftel, J. Simen, Simenitsky, Klannis & Krilowich, Simon & Fisher, Simon & Palefsky, Skillman Pants Co., Max Sionimsky, Julius Smith, S. Smith.

Newark, N. J.: 56 establishments, employing from 25 to 110 workers, average per establishment, 44 workers. Names of employers: Academy Tig. Co., Addonizio & Colaruso, Bibona & Pilone, Bozza Bros., F. Cainello, Caprio Bros., Central Tig. Co., Contaldi & Biondi (well built), D'Alessandro Bros., Orazio D'Allessandro, E. Deangells & Co., De Fronzo Bros., Delton Tig. Co., Di Ferdinando A., Di Posala & Co., Eaton Hall Coat Manufacturing Co., Essex Coat Manufacturing Inc., Fashion Shop (Scoppetuolo), Fleisher & Notkin, Joseph Genovese, Gesten, Goldberg, & Yanowitz, Giacobbe Bros., Glorgio Bros., S. Goodman, Greenberg & Goldstein, Guarantee Coat Co., N. Guritsky & Son, Hoboken Coat Manufacturing Co., Hochberg & Gabel, Hudson Clothing Co., Ianelli & Glorgio, Inc., J & S Pants Co., Jean Coat Co., Kleinwachs Bros., Kovitz & Gottesman, Angelo Lauro (Royal Coat), S. Lenzo Tig. Co., Levy-Fiorito, Livingston Coat Manufacturing Corporation, Ralph Longo, Marianaro Bros., Nick Mercuro & Co., Milton Tig. Co., Inc., Modern Coat Co., Inc., Morris Vest Co., Newark Clothing Co., Peerless Pants Co., Polo Clothing Co., A. Poselia, Peter Prestera, Santoro-Solomine Santore, Skoloff & Epstein, Spiotta & Co., Surdi & Sons, Varsity Clothing Co., D. Warshawsky & Sons.

Passaic, N. J.: 35 establishments, employing from 32 to 230 workers; average per establishment, 100 workers. Name of employers: American Clothing Co., American Trouser Co., Arrow Clothing Co., Arrow Pants Co., Bayview Pants Co., Bernstein Bros., Best Make Clothing Co., Capital City Clothing Co., Clifton Clothing Co., DeGraci Vest Co., Fashion Vests, Feldman Morris (Lakeview), G. M. G. Clothing Co., Garfield Pants Co., Frank Garruto, Ledgin Dickerman & Ledgin, Lodi Pants Co., Mondoh Vest Co., Malcolm Trouser Co., Mausner Trouser, New Fashion Clothing Co., Perfect Vest Co., Pestcoe Manufacturing Co., Rahway Vest Co., Reliable Clothing Co., S. & E. Clothing Co., John Savage, Standard Trouser Co., State Trouser Co., Stein-Roy, Inc., Supreme Pants Co., Tri-Country Pants Co., A. Tuminella, U. S. Clothing Co., Universal Vest Co.

Philadelphia, Pa.: 97 establishments, employing from 21 to 210 workers; average per establishment, 45 workers. Name of employers: Brand & Lemonick, Ephraim Browstein, Cancelli & Desiderio, Nicholas D'Alonzo, Mich D'Onofrio, Israel Farbman, Nathan Feldman, Morris Finkel, Anthony Gattone, John Irvin, Jaffee & Marcus, P. Keiser, A. Marion, J. Machalovsky, A. Orlando, John Paladine, Paramount Coats, Cherubion Petti, Vincent Pusinkas, Quality Coats, Guillio Ranteri, Mario Ranieri, Nich. Ranieri, Harry Rosenfield, Weiner & Brodkin, Sigman & Horowitz, Simon & Mellitz, Surefit Mfg. Co., Samuel Tobia,

Watman & Cohen, M. Westotsky, Independent Coat Shop, Berkay Clothes, Inc., Stanley Skukoski, A. Menkus, Charles Waselwald, Michael Mathictus, Wm. Muraskus, A. Jacobs, Louis Feingold, M. Apfelschnitt, Bergelson-Serin, A. Eisenberg, Fine Pants, Forman-Shulik, Joseph Giachino, H. Gold, Kahn Bros., Katz & Goldman, Oritsky-Magerman, Riverside Pants, Philadelphia Pants, M. Rothberg, David L. Wilder, Willig-Eisenberg, Zitomer Bros., Michale Corso, Shore-Lichton, H. Bafsky, Baron Bros., Barris-Pincus, I. Greenberg, Eskin-Hoffstein, Wm. Kaslow, Samuel Kress, Kress-Gross-Bellak Bros., I. Laskin, A. Lerner, Martel-Goldberg, Posner & Savitz, Miller & Jacobs, Shore-Cutler-Katz, Shapiro-Frank, Superior Quality Vest, Samuel Weiss, Rosenfeld-Goldstein, A. Bischioitt, D. D. 'Cristophara, Emedia D'Gaetano, Tito D'Giacomo, Joe De Ritas, Vincent DeRitas, Jose Giordano, Andrea Guarachina, Lewis Moccia, John Monetto, Novelty Buttonhole, Novelty Guido Carideo, Rochester Buttonhole Co., South Philadelphia Buttonhole Co., Stile Co., Chas. Travaglini, Alex Yanni, Philadelphia Buttonhole Co., Felix D'Arenzia.

Vineland, N. J.: Fourteen establishments, employing from 40 to 132 workers; average per establishment 70 workers. Names of employers: B. & G. Pants Co., J. Barse & Co., A. DeRossi & Sons, DiDonati & Beitch, Enterprise Clothing Co., Landis Clothing Co., Model Coat Co., Royal Pants Co., Shapiro Clothing Co., Henry Sorg, Stan-Lou Corporation, United Pants Co., Inc., Vineland Vest Shop, M. Waldman.

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

MONDAY, MARCH 25, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, Walsh, Barkley, Connally, Costigan, Clark, Lonergan, Couzens, Keyes, La Follette, and Hastings.

The CHAIRMAN. The committee will be in order. Mr. Curlee, you may proceed where you left off Friday.

STATEMENT OF FRANCIS M. CURLEE—Resumed

Mr. CURLEE. First, Mr. Chairman, I have a subpena duces tecum to produce certain documents here. I have them to submit to the committee.

The CHAIRMAN. Those are all of the documents that are in your possession? You have answered fully?

Mr. CURLEE. Every scrap that I have issued since March 7, inclusive.

Senator LA FOLLETTE. I suggest that they be turned over to the committee's assistants.

Mr. CURLEE. I wish to make this preliminary statement, Mr. Chairman. In the very beginning I was confronted with the question of relevancy—what is relevant to this inquiry. Rather than resolve those questions myself, I decided to include everything, so that there could be no questions of relevancy. This contains every scrap which has been sent out by me within that time, whether relevant or not.

Some of them, a few letters, are purely personal letters concerning my relations between myself and my client and having no relation whatsoever to this. Some of them are purely personal letters having no remote relationship to this.

I merely request that the committee determine its own rules of relevancy and handle those confidential matters as the committee sees fit in its discretion.

The CHAIRMAN. We have three experts in whom the committee has confidence, and they will be turned over to the clerk and then in turn turned over to the experts to go over it, and you are at liberty to confer with any of those gentlemen. They may present to the committee that which is relevant, so that it won't take up too much time.

Mr. CURLEE. I am merely determined to withhold none of those. I am sure that none of those will be abused so far as the professional matters are concerned. They are not numerous.

What I have to present is these letters in this file [indicating], this printed document [indicating], and this printed document [indicating].

The CHAIRMAN. Have you a copy for each of the members? I have one of those.

Mr. CURLEE. I have a copy of the printed matter for each of the members; yes, sir. I would be glad to have those distributed now.

The CHAIRMAN. I think probably you had better turn them over to the clerk of the committee and he can see that each of the members gets a copy. If they are just put on the desks they may not get them, so that the clerk can see that each member gets one of those copies.

Mr. CURLEE. This file I will deliver to the chairman now. [Producing a file, which is handed to the clerk.]

The CHAIRMAN. Now, proceed, Mr. Curlee.

Mr. CURLEE. I was asked at the last session to give some information about wages, precode.

There was an audit made for the test week of July 15, 1933, of the St. Louis plant, and that showed an average wage of 36 cents per hour. That was precode. In August 1933 there was an increase of 30 percent in the piecework rates.

Senator LA FOLLETTE. Was that prior to the adoption of the code, or afterwards?

Mr. CURLEE. The July 15 week was prior to the code. The August week was after the code, that is, after the President's Reemployment Agreement. It was before the code became effective, but the President's Reemployment Agreement was effective. The company subscribed to that reemployment agreement.

For the week ending March 20, 1934, after the 30 percent increase, the average earnings were 58.2 cents per hour. If those were adjusted for the 30 percent increase, it would give an average wage of 44.770 per hour for the week of March 20, 1934, if there had been no increase in wages.

That discrepancy is explained by two circumstances. The reviva of business in 1933 caused numerous new employees to be put on. That, of course, reduced the average for all of the manufacturing employees. The latter month that I have mentioned was a normal month after they had been trained, and their productivity was greater.

It is also partially accounted for by the improvement in manufacturing methods.

Not affecting this particular problem, there was a further increase in April or May 1934 of 20 percent.

In the Mayfield plant, the average earnings for the test week ending July 15, 1933, was 21.73 cents per hour. There were likewise numerous new employees in the Mayfield plant.

In August 1933 there was an increase in the piecework rates of 40 percent in Mayfield, and in April or May 1934 a further increase of 20 percent, that is, 20 percent of the increased figures, so that the total increase is 68 percent of the rates as of July 15, 1933.

The week ending August 31, 1934, a normal week used as a test week, the average earnings were 61.13 cents per hour.

An adjustment of that in the same manner I have indicated for the St. Louis plant would indicate that the earnings in Mayfield would have been 36.39 cents per hour if there had been no increases.

It was reconciled in the same manner as the St. Louis plant by the fact that these new employees were trained and that there were improvements in production methods. I believe that answered your question.

Senator LA FOLLETTE. Have you any information, Mr. Curlee, going back of July 15, 1933?

Mr. CURLEE. No, I have no information on that, Senator.

Senator LA FOLLETTE. Could you obtain it for the committee?

Mr. CURLEE. I could, I think, with much difficulty. The records are all there.

I will tell you something about the difficulties encountered in this. This data was gotten up for the code hearings. The code auditors themselves do not undertake, because it is such a task, to cover more than test weeks. They take a precode test week, then they take a postcode test week, and they work from that. It is an enormous task to audit these pay-roll figures and arrive at the correct results. I mean, it cannot be done just by casual inspection. The clothing code authority cannot do that, but these are the test weeks that have been used by the clothing code authority as a basis for the issues that have been up with them.

Senator LA FOLLETTE. Could you, from your general knowledge of the business, give us any general statement as to whether wages, let us say in 1932 or in July 1932, were higher or lower than the test week that you have given, the precode test week?

Mr. CURLEE. I think, Senator, they were the same. I do not believe there had been any changes in piecework rates. There were reductions in piecework rates during the depression, and then these increases that I have spoken of at on or about the time the codes became effective, but there had been no substantial changes prior to that recently.

Senator LA FOLLETTE. Have you any similar information concerning hours worked?

Mr. CURLEE. Yes, sir; the hours were 44 in St. Louis and 50 in Mayfield.

Senator LA FOLLETTE. Prior to the code?

Mr. CURLEE. Prior to the code.

Senator LA FOLLETTE. And what are they now?

Mr. CURLEE. Thirty-six.

The CHAIRMAN. In both places?

Mr. CURLEE. Thirty-six is the code maximum. In both places.

Senator LA FOLLETTE. Have you any information on average weekly earnings, precode and after the code?

Mr. CURLEE. No; I could not give you any figures on that.

Senator LA FOLLETTE. Could they be obtained?

Mr. CURLEE. They could be obtained. As I say, it would be a difficult task. When you speak of average weekly wages, that cannot be determined by looking at a series of pay envelops. Those are very misleading. An employee may have worked a day and a half during a week or he may have worked the full 5 days or 5½ days, or whatever the week's work was, so that it requires a careful analysis of pay-roll records to get at that. It cannot be done casually.

Senator KING. Did that disparity in the number of days worked in a week result from lack of work or the voluntary action of the employees?

Mr. CURLEE. Both causes, Senator. This company has succeeded to an extent that is seldom excelled if ever in the clothing industry of providing continuous employment. Nevertheless, there are undoubtedly some slack periods when there is not full production. It also results from the will of the employees or accidents or whatnot.

Senator LA FOLLETTE. Can you tell us, Mr. Curlee, what has happened to production in those plants, precode and after the code was established—whether it has gone up?

Mr. CURLEE. Production has improved.

Senator LA FOLLETTE. Would you say how much, approximately?

Mr. CURLEE. I could not give you any estimates of that, Senator, but I can say that it has improved.

Senator LA FOLLETTE. Substantially, would you say?

Mr. CURLEE. Substantially, I would say. And I was informed by Mr. Bell, who was until recently the executive director of the clothing code authority that that was a phenomenon that was common throughout the industry, that production had improved.

Senator LA FOLLETTE. What can you say of profits, precode and after the code? Have they increased or have they decreased so far as your company is concerned?

Mr. CURLEE. I have no data so far as the effective dates of codes are concerned. 1934 was a better year than 1933. 1933 was a better year than 1932, the preceding year. I believe it is true that throughout the industry that profits have been better the last 2 years than they were in the recent preceding years.

Senator LA FOLLETTE. From your general knowledge of the clothing industry, were there conditions of shockingly low wages in the years of 1932 and 1933 and prior to the enactment of the N. R. A?

Mr. CURLEE. I have no information on that, Senator, but that information is full and complete in the possession of the code authority. They have thoroughly complete data on that subject.

Senator LA FOLLETTE. I was chairman of a committee which investigated some conditions relative to the relief situation in the country prior to the time that the Federal Government came to the assistance of the cities, towns, and States in meeting that problem, and on February 2, 1933, Mr. Stephen Rauschenbush, director of industrial relations of the Commonwealth of Pennsylvania appeared before a subcommittee of the manufacturers' committee, and made statements which so far as I know have not been challenged. Among them were these. [Reading:]

My second point, Mr. Chairman, is that many of the substandard or sweatshop plants are in effect being subsidized by Federal, State, and private relief funds. There are some shops in Pennsylvania paying women $2 and $3 for a 54-hour week, exactly as there are in Connecticut. Miss Frances Perkins, Labor Commissioner of the State of New York has just written an article published in the Survey last month, pointing out that exactly the same situation prevailed in New York. At a meeting last week of the officials of the various labor departments of the Northeastern States in Boston, to which I was a delegate, the labor commissioners of New Jersey, Rhode Island, Maryland, and other industrial States pointed out that exactly the same situation prevails there. The men's clothing industry in November 1932 showed manufacturers averaging $3.31 a week, with 78 percent getting under $5 a week. The average for women was $7.54, for 61.1 percent getting under $10 a week. Half of the minors and women

received less than $3.31 and $7.54, respectively, nor is the $3 wage the low level. Two days ago, one of the factory inspectors came in and informed me that in a factory not far from York, Pa., women were working 54 hours and were getting $1.08 a week.

Senator CONNALLY. A week?

Senator LA FOLLETTE. A week.

That, so far is the lowest we have had, except in some cases where women did not even get paid. They are inveigled into working in the factories. In factories as learners, as the term goes, and after they have supposedly learned the trade. they are discharged without any pay whatsoever, to give way to other learners.

May I ask you from your general knowledge of the industry, as to whether or not, assuming that statement made by the commissioner of industrial relations of Pennsylvania to be correct, whether conditions have been improved since the enactment of the N. R. A.?

Mr. CURLEE. Senator, I do not know of those conditions. Dr. Lindsay Rogers, who was the deputy administrator in charge of the clothing code, stated in his report—I will find the exact language for you directly—but in substance that the men's clothing industry was not one of those sweatshop industries as a whole. I do not believe that in the men's clothing industry there has been a great many situations such as you have described. I am informed generally that there has been in some industries. I do not believe that has prevailed.

Senator LA FOLLETTE. In that connection, may I ask you if Schoeneman, Inc. is one of the members of your association?

Mr. CURLEE. Yes; that is a member.

Senator LA FOLLETTE. Is he a large or small manufacturer?

Mr. CURLEE. A large manufacturer.

Senator LA FOLLETTE. Are you familiar with the fact that the Commissioner of Labor Statistics for the State of Maryland made a report in December 1932 that an investigation of Schoeneman's plant found that an appreciable number of workers earned less than 15 cents an hour?

Mr. CURLEE. No; I do not know of that report. I think we have to discriminate, Senator, as you did in the report you read from a moment ago, and that is between the minimum, where you show some workers who made thus and so, and the average. I think the average wage in any plant is instructive, of course, but when you speak of a minimum, it may be involved with beginners or various other standards and conditions.

Senator LA FOLLETTE. What would you say about the further statement in that report of that investigation that approximately one-half of the workers received less than 20 cents an hour, and if you figure that out on a 48-hour working week, it would produce an income of only $9.60 a week.

Mr. CURLEE. I do not know the class of labor or what conditions obtained there at all. I do know that that has been the subject of inquiry, the wages in that plant as in substantially all other members of the Industrial Recovery Association. It has been recently the subject of inquiry.

Senator LA FOLLETTE. Would you say that the enactment of the code, from your general knowledge of its effect, had proved this condition and remedied it to a certain extent, or that it had not had any effect upon it?

Mr. CURLEE. Oh, the adoption of the code has undoubtedly raised wage levels in the clothing industry.

Senator LA FOLLETTE. From your point of view, do you think that is a step in the direction of increasing purchasing power or otherwise?

Mr. CURLEE. Senator, I am not qualified as an economist.

Senator LA FOLLETTE. I did not ask you to. You are qualifying here as a witness, I assume, on this investigation, and I am simply anxious to get whatever light you can shed upon this whole situation.

Mr. CURLEE. As to whether it adds to purchasing power or merely transfers purchasing power, or what the consequences may be of this policy, I do not think I could answer, and I doubt that anyone could now.

Senator LA FOLLETTE. What are the effects of the minimum provisions, let us say, in the codes, so far as the employers in the Baltimore market are concerned?

Mr. CURLEE. I believe the minima provided in the codes have affected the minimum wages substantially throughout the country.

Senator LA FOLLETTE. And tended to increase them?

Mr. CURLEE. And tended to increase them; yes.

Senator LA FOLLETTE. Are you out of sympathy—I just want to get your point of view—are you out of sympathy with efforts to increase the purchasing power of the wage earners?

Mr. CURLEE. Now, Senator, you have come now to the problems of the clothing industry, and I can answer a little more certainly. When I am asked my abstract views on economic subjects, I confess I am somewhat at a loss.

Senator LA FOLLETTE. I did not think my question was abstract. I was asking you about a large manufacturer, according to your estimate, who is a member of your association, and I was giving you some specific facts about the minimum wages that existed or failed to exist in that industry prior to 1933, and I asked you also what was the effect of the specific code that we have under discussion at the present moment, upon the minima in that particular market.

Mr. CURLEE. If you will pardon me, Senator, I am not trying to evade your question, but to answer it in stating that I feel on safer ground when I speak as an attorney for an association of clothing manufacturers. There has been and there is no resistance by that association to a reasonable minimum wage. I feel sure that every member of this association would be pleased if we were to continue with the N. R. A. to have a uniform minimum wage which would be clearly understandable and definite.

Senator LA FOLLETTE. What would you consider, to use your own phraseology, a reasonable minimum wage?

Mr. CURLEE. Speaking as an attorney for the association, it is the view of our association that that can be left entirely to the administration, to anyone who wants to determine it, if it is uniform in its application throughout the industry and is a definite minimum wage without complicated arrangements that are not understandable.

Senator LA FOLLETTE. By "complicated arrangements", do you refer to the differentials, which I understand have been incorporated in some of the codes, and I think probably in this one, although I am not certain, between certain sections of the country?

Mr. CURLEE. No; I am not speaking about that.

Senator LA FOLLETTE. Are you in favor or opposed to differentials of that nature?

Mr. CURLEE. Sectional differentials?

Senator LA FOLLETTE. Yes.

Mr. CURLEE. Well, I would not state any position on that at all, Senator.

Senator LA FOLLETTE. You have no position on that?

Mr. CURLEE. I know that is a very complicated subject. We have conditions which if you take two remote extremes, the differential seems to be justified. Then when you draw the geographical line, you will find a disparity in competitive conditions on one side of your State line and the other. It is a complicated and intricate problem. I would hesitate to attempt to offer a solution for it, but the position of our association is and has been continuously this—give us a definite rule and let us know what it is and we will comply with it.

Senator LA FOLLETTE. I am anxious to get your opinion, Mr. Curlee, as an individual, if you prefer, on what you think would be a reasonable minimum wage in the clothing industry.

Mr. CURLEE. The existing minimum is 3 cents an hour differential——

Senator LA FOLLETTE (interrupting). I did not ask you about differentials. A few moments ago I understood you to say that your people with whom you are associated are not opposed to minimum wages being established. And you described the type of minimum to which you would find no objection as a reasonable minimum. I am anxious to get your judgment or opinion as to what you think would be a reasonable minimum wage.

Mr. CURLEE. No one regards, so far as I know, a 40-cent minimum as being unreasonable high, no one in the association, but the position taken by our association is that if you will simplify it, clarify it, it can be made 40 cents, or 50 cents, or 75 cents. Any rule, speaking of this association of the industry as a whole, can stand, and this association can if you will make it definite and certain.

Senator LA FOLLETTE. Then I take it you are not opposed to the efforts to put bottoms into the wage situation in this country so far as industrial operations are concerned.

Mr. CURLEE. As being opposed, I have never believed personally in the regimentation of industry in any way whatsoever. Those are my personal views.

Senator LA FOLLETTE. Do you regard efforts to establish minimum wages in an industry as attempts to regiment the industry?

Mr. CURLEE. Senator, my own personal views are perhaps not important. So far as our association is concerned, it has no opposition to a minimum wage.

Senator LA FOLLETTE. Did Dr. Willford I. King represent your association as an economic expert in the hearings that were held early in February on the proposed changes in the code?

Mr. CURLEE. He did.

Senator LA FOLLETTE. Did he thoroughly reflect the point of view of your association?

Mr. CURLEE. He generally reflected the point of view of the association in that paper. As an economist, I will say that he fairly reflected my own immature views on that subject.

Senator LA FOLLETTE. A reading of his testimony would indicate, it seems to me, that he was opposed to any efforts to establish minimum wages or put any bottoms into the wage situation.

Mr. CURLEE. I think he disbelieves in any attempt to fix the prices or wages of any kind whatsoever.

Senator LA FOLLETTE. Does that reflect the point of view of your association?

Mr. CURLEE. It reflects my own personal point of view, which is not important, but practically the association has taken the position from the beginning that it would make no issues on a minimum wage.

Senator LA FOLLETTE. Then in that regard, Dr. King did not represent the point of view of the association, although he appeared as one of your expert witnesses?

Mr. CURLEE. I do not know what the individual economic views of the association are, but I do distinguish when it comes to the practical problems of the association, which I as their counsel present in what I hope to be a practical way. The association does not deal in economic theories in these matters, Senator, but we have codes. It does not make any difference whether an individual member of the association likes codes and another one does not like them, we have the codes, and as a practical problem, it was presented of how they should be handled.

I think they are somewhat pragmatic about it, and in the solution of that problem, there has been no objection made to a minimum wage.

Senator LA FOLLETTE. Then to that extent, I repeat the question: Dr. King did not represent the point of view on the association?

Mr. CURLEE. When you speak of the point of view of the association, the association has not formulated any point of view on economic abstractions.

Senator LA FOLLETTE. I am not discussing economic abstractions now. I read Dr. King's testimony, and I got the distinct impression that he was opposed to any minimum wages or to bottoms being put into the wage structure, and I asked you what seemed to me a simple question: Did that testimony, or did it not, reflect the point of view of the Industrial Recovery Association?

Mr. CURLEE. Well, Senator, I am trying to be frank with you. It does not reflect the attitude taken by the association on any of the issues that have come up. As to whether it represents the particular views of individuals, I think is a different matter, and I do not know.

Senator LA FOLLETTE. I would not expect you to be able to testify in that regard. So that to that extent, at least, Dr. King's statement concerning minimum wages and bottoms in wages did not reflect the attitude or point of view of the Industrial Recovery Association as such.

Mr. CURLEE. Well, Senator, I am trying to deal in facts and not in conclusions. I believe I am proper in distinguishing between the attitude of the association in the various issues that have come up as an association, and the indidvidual views of its members. I will say that the association as an association has made no protest against the minimum wage. The minimum wage proposed in the code proposed by this association was the same as the one proposed by the U. S. A. Association.

Senator LA FOLLETTE. Now, may I ask you one further question on that testimony of Dr. King? I got the distinct impression from Dr. King's testimony that he believed that wages should be arrived at as the result of a bargain between the employer and the individual employee. Can you tell the committee whether or not that position

taken by Dr. King represents the point of view of the Industrial Recovery Association?

Mr. CURLEE. The Industrial Recovery Association, I must say again, in that respect, has formulated no policy whatsoever. There are in the association employers operating under the United Garment Workers, those with so-called "company unions", and those without any collective-bargaining features whatsoever, so the association has formulated no point of view on that.

Senator LA FOLLETTE. Can you tell me what the view of the Curlee Clothing Co. would be upon that question?

Mr. CURLEE. The attitude of the Curlee Clothing Co. has been for years the open-shop attitude. It has dealt with its employees individually, its reputation is that of having dealt with them fairly, they certainly have a loyal lot of workers. I may say enthusiastically loyal.

Senator LA FOLLETTE. Dr. King said under cross-examination that he believed that this policy of the wages being arrived at as the result of bargaining between the employer and the individual employees should be carried out no matter how low the wages might go. In one instance he said even if they went to 5 cents an hour, that policy should be followed. Do you know whether that reflects the point of view of the Industrial Recovery Association or not?

Mr. CURLEE. The Industrial Recovery Association has formulated no point of view at all on that subject.

Senator LA FOLLETTE. Can you tell what the point of view of the Curlee Clothing Co. is upon that point?

Mr. CURLEE. The Curlee Clothing Co. as a company has never been confronted with the problem, the practical problem of wages going to 5 cents an hour. You bring up a moot subject there which has been debated for a long time and perhaps will continue to be debated. There is a conflict of economic ideas that each individual has to resolve for himself, I think.

Senator LA FOLLETTE. Well, apparently from the statement from which I just read a while ago from Mr. Raushenbush, when we were permitting people to arrive at those decisions for themselves, shockingly low wages resulted in the State of Pennsylvania in the clothing industry, in which in some instances they got so low that in order to keep the body and soul of workers together, they had to get public relief to supplement the wages that they were receiving. Do you think that in the public interest, conditions of that kind, economic conditions and wage conditions and working conditions, should be ignored and nothing done about them?

Mr. CURLEE. My own view coincides with that of Dr. King. I am speaking now of my own views, and you asked me that, is the absolute free play of economic forces.

Senator LA FOLLETTE. No matter what happens?

Mr. CURLEE. I beg your pardon?

Senator LA FOLLETTE. I say, no matter what happens?

Mr. CURLEE. Well, generally speaking. Of course, it would take a bold person to say, "No matter what happens", because we have recognized, whether correctly or not, the propriety of the control of charges of public utilities. It would be a pretty bold man who would lay down any proposition and say, "This must be adhered to no matter what happens."

Senator LA FOLLETTE. Assuming that the statements made in Mr. Raushenbush's testimony in February 1933 were accurate, do you think that that does or does not present a problem which should have the attention of those who are responsible for the governmental policy in this country?

Mr. CURLEE. I cannot make any certain answer to that, Senator, but I can say that in my own personal view, I think that the remedy is apt to prove worse than the disease.

Senator LA FOLLETTE. But you admit tkat the action thus far taken has resulted in very substantial improvement of conditions such as were outlined in Dr. Raushenbush's testimony?

Mr. CURLEE. It certainly has resulted in increasing the minimum wage. As to whether it has brought more prosperity as a whole to workers in the clothing industry and more prosperity to the consumers of clothing, I doubt.

Senator LA FOLLETTE. In that regard, can you give us any general statement as to what has happened to the clothing prices under the codes?

Mr. CURLEE. I cannot give you any figures, but they have been materially increased.

Senator LA FOLLETTE. How much would you say approximately?

Mr. CURLEE. I could not tell. Clothing is not a staple commodity like pig iron or wheat which can be measured that way.

Senator LA FOLLETTE. Could you not give us some approximation? You said that they had been increased?

Mr. CURLEE. I do not believe I could. That might be obtainable by you but not from me, but I may say that they have been increased.

Senator LA FOLLETTE. Proceed, please.

Senator KING. Is that all?

Senator LA FOLLETTE. For the moment.

Senator KING. Any other questions?

Senator LA FOLLETTE. You have not concluded your testimony, have you?

Mr. CURLEE. No, Senator.

Senator KING. Proceed then, Mr. Curlee.

Senator COSTIGAN. Mr. Curlee, before you proceed, may I recall your attention to some statements made when you were last here with respect to the failure of the code authority to provide you with data selected from more or less confidential reports made by yourself and others.

Mr. CURLEE. If you will pardon me just a moment, Senator. Have you completed your question?

Senator COSTIGAN. No. Is it a fact that you received a report at that time, about January 29, 1935, which appears to represent a rather full compilation of the type of data about which you were testifying the other day?

Mr. CURLEE. Senator, we received a report on or about that day. I could not identify it exactly, but it is probably correct.

Senator COSTIGAN. I have in my hands and pass to you the report to which I refer.

Mr. CURLEE. The date is probably correct, and I believe the data were furnished.

Senator COSTIGAN. Were supplemental reports sent to you from time to time, of a similar character?

Mr. CURLEE. I think these came in the installments. I am not sure whether all of those came at one time or in installments, but we were furnished from time to time with some reports.

Senator COSTIGAN. What were the deficiencies about the material to which your attention is now directed?

Mr. CURLEE. The deficiencies were these: Mr. Herwitz, the controller of the code authority, testified at the hearing—well, the first deficiency was—the hearing was scheduled for February 1, and this material, if that date is correct, came in on January 29. It was entirely too late to be digested for any use at the hearing.

The other deficiencies were these: That these are what Mr. Herwitz called "representative" data. They were not representative data at all, but selected data.

In the first place, he said that there are 125,000 employees attached to the clothing industry, and that his report, these data that he furnished, covered approximately 99,000 of them, not covering the whole field.

Furthermore, they were from selected employees—I think the 50 largest manufacturers, and then a certain number of smaller manufacturers within the certain range, and then the 50 largest contractors, and then a certain number of smaller contractors—which is not truly representative of the industry.

In the second place they covered a period, taking them as a whole, not any one of them, but taking them as a whole, from July to November.

Senator KING. What year?

Mr. CURLEE. 1934, the preceding year. That was a period of high production in the eastern markets, and was not truly representative, I believe, of their conditions which could be shown over a whole year.

Furthermore, some of these data covered a particular number of selected weeks, and other data covered another number of selected weeks.

Now, I would like to put into the record an analysis, made again by Dr. Willford I. King, in which he goes into that very thoroughly, much more thoroughly and skillfully than I could, of course, for I am not qualified to do that, and he states that these data were furnished to prove certain postulates, and after an analysis his general conclusion is that they have not tended to prove any of those postulates.

Now, as to the data, may I offer this report of Dr. King as a part of the record?

Senator KING. Is that the report to which Senator La Follette referred to?

Mr. CURLEE. No, sir; the report to which Senator La Follette referred to——

Senator KING (interposing). What is this a report of?

Mr. CURLEE. To distinguish carefully, the report to which Senator La Follette referred was a paper read by Dr. King at the hearings of these amendments, the hearings beginning February 1. We did not have these data in time to digest them, but after the testimony was in, Dr. King at my request made an analysis of the data presented by the code authority, and this is his analysis that I am now offering.

Senator KING. Have you any objection, Senator?

Senator COSTIGAN. No.

Senator KING. It may be received.

(The report just mentioned will be found at the close of the day's session.)

Senator COSTIGAN. May the report which was handed to the witness be marked as an exhibit, though not necessarily incorporated in the record?

Senator KING. Do you desire it referred to the files or may the secretary keep it?

Senator COSTIGAN. It is a photostat copy and should be turned over to an expert representing the committee.

Senator KING. Mark it "Exhibit 1," Mr. Stenographer.

(The report was marked "Exhibit 1.—Statement submitted in support of the amendments to the men's clothing code proposed by the management members of the code authority", and was placed on file with the clerk for the use of the committee.)

Mr. CURLEE. In this hearing this was a most sweeping provision which would affect the entire industry, and in my opinion would jeopardize the very existence of a large part of the industry, this proposed amendment. I had some correspondence with Mr. Vincent, the deputy administrator.

Senator KING. The amendment was proposed by whom?

Mr. CURLEE. By the Clothing Code Authority. We are discussing now the data presented for this hearing before the Clothing Code Authority. The issues are somewhat elaborated in a letter I wrote Mr. Vincent on January 22.

Senator COSTIGAN. Who is Mr. Vincent?

Mr. CURLEE. He is the deputy administrator in charge.

Senator COSTIGAN. Mr. M. D. Vincent?

Mr. CURLEE. Yes, sir. We had asked the code authority for these data and they had referred the request to Mr. Vincent. Then ensued a considerable correspondence with Mr. Vincent.

I would like to read my letter to him of January 22:

DEAR MR. VINCENT. We have your letter of January 19, 1935, addressed to Mr. Weinberg.

You say that you are voluntarily endeavoring to supply us with "representative" pay-roll data over an adequate experience period to assist us to prepare for the February 1 hearing.

As to this being a "voluntary" endeavor, we have only to say that we have clamored for statistical data continuously since December, when we received first information of the proposed hearing, then scheduled for January 3. The code authority declined to give us access to the records. We then wrote the code authority for certain classified statistical data. The code authority replied saying it could not give us the information without your permission and instructed us to make the request to you. This we immediately did. Since then we have continued to importune you for these data.

As to the compliance with our request by supplying us with representative pay-roll data, we think this is entirely inadequate and will inevitably be misleading. The only way to determine what is "representative" data is to have all data submitted and then hear the conflicting views of both sides of the controversy. A true representation cannot be made of the facts and of the economic implications if one contending part is in full possession of all the facts and the opposing party is denied the facts.

You say these representative pay-roll data will cover "an adequate experience period." Who is to determine what is an adequate experience period? Is the experience period to cover a term of peak production in the New York market? Is it to cover a term of slack production? Operations in what may called the "code authority areas" are highly seasonal. If you are to have the true conditions obtaining in the clothing industry to guide you in arriving at a correct conclusion on the issues presented, you should have complete data and

should have the benefits of the views and interpretations of these data by both contending parties.

You further say: "This is, of course, in no wise intended to limit your own research and preparation through your own facilities and in your own way."

With all respect, Mr. Administrator, this is an amazing suggestion. You must know that prior to the code there were no adequate production and wage data available to the clothing industry. One of the purposes of the code was said to be to collect these kinds of data for the use and benefit of the industry. It has been collected at vast expense. The element of the industry which we represent has contributed a tremendous sum to that expense, probably half. It may be more than half. It may be less. We do not know. The code authority knows, but it will not tell. The code authority raises its revenues from the sale of labels. It has exact records of all the labels it has sold. We now request that you procure for us from the code authority the total number of labels it has sold to the whole industry during the calendar year 1934. We also request that you procure for us the number of labels during that time, sold in Chicago, the number sold in Rochester, the number sold in New York, and the number sold in Philadelphia. One clerk with an adding machine can tabulate this information in a very brief time. The code authority is now asking approval of a budget——

Senator COSTIGAN (interposing). May I interrupt to ask you what was the importance of that particular request?

Mr. CURLEE. There had been considerable discussion from the beginning and even up to this time, and it has been shown in this testimony as to what the relative production is in those four markets and the remainder of the country.

Senator COSTIGAN. What was the significance of that from your viewpoint?

Mr. CURLEE. From my viewpoint——

Senator Costigan (interrupting). Do you want a different distribution or a different share in the production?

Mr. CURLEE. Yes, sir.

Senator COSTIGAN. On what assumption? Did you want the code authority in some way to permit you to have a larger share in the production?

Mr. CURLEE. Well, we are getting into the broad issues now. No; I did not want any fiat of the code authority in that respect, but I did want to know and I wanted to know for a long time what the relative production was in those four markets.

Senator COSTIGAN. You answered first that you did want a different distribution and a large production.

Mr. CURLEE. I must have misunderstood your question.

Senator COSTIGAN. Very well. Would you regard that sort of handling of the business of your industry as regimentation which you would object to?

Mr. CURLEE. What sort of handling?

Senator COSTIGAN. A different distribution through some authority which would permit you to share more widely in the market.

Mr. CURLEE. Nothing was further from my intention than to rearrange the distribution by fiat of the code authority, Senator.

To continue. [Reading:]

The code authority is now asking approval of a budget of some $300,000 for the current year. It spent vast sums last year. At huge expense, it has collected and now possesses full and complete data.

The code authority has access to this data at all times. Access is denied to us. This wealth of information, never before obtained, impossible otherwise to obtain, is on hand and easily available; and you inform us that your course is in nowise intended to limit our own research and preparation through our own facilities and in our own way. Through what facilities, Mr. Administrator, and in what way?

In the next paragraph you say you have informed the Research and Planning Division of our specific requests and have asked it to make compilations from code authority records of all such representative pay-roll data as it deems material. Might not the endeavor of the Research and Planning Division to determine what is material be aided by the views of both of the contending parties? This implies no reflection whatsoever upon the integrity, intelligence, or fairness of the Research and Planning Division. It is axiomatic that any judge, no matter what the character of the tribunal, can best arrive at a correct decision by hearing and considering the contentions of the contending parties. The Research and Planning Division is no exception. It cannot enter a vacuum and reach a correct conclusion from abstract reasoning. It must obtain information concerning the clothing business from persons experienced in and connected with that business. In the presentation of such matters we ask for our element of the industry an opportunity to be heard.

You further say the compilations to be made by the Research and Planning Division will be placed in our hands immediately upon completion. We direct your attention to the fact that the hearing now is only 9 days away.

You say "Some of your specifications obviously include confidential information." We are entitled, Mr. Administrator, to ask you to be specific. If you will again look over our specifications you will observe that they ask for consolidated figures classified into geographical subdivisions. We take it that under the code theory the facts concerning an individual manufacturer are confidential, but we have never understood that the data are confidential as to whole production areas. For example, is the amount of production in New York City a confidential matter? Is the average wage per hour paid in Chicago confidential to Chicago? If so, can statistical data ever be broken down into geographical areas of production? If these data are to be forever locked confidentially in the breast of the Code Authority, and cannot be given to the members of the industry for their enlightenment and guidance in the form of consolidated and classified statistics, it is folly to collect them, and an egregious waste of time and money.

The CHAIRMAN. Is that still the policy of the code administration?

Mr. CURLEE. That is still the policy, Senator.

Senator COSTIGAN. Did you receive the data about which you are complaining as to minimum wages and production?

Mr. CURLEE. No, sir; we have never received that.

Senator COSTIGAN. Did Mr. Vincent make any response to your inquiry?

Mr. CURLEE. Yes, sir; he made a reply to that. I will read it, if I may complete this.

You say "It is my understanding from the code authority, that it is ready and willing to furnish you material and representative pay-roll data for all markets specified, not including those parts of reports by members of industry which contain confidential information."

This may be your understanding, Mr. Administrator, but we have had no intimation from the code authority that it has the remotest intention of complying with our request. Can you indicate to us how they may be galvanized into activity? The meaning of the last-quoted sentence is obscure to us. If it means that the Code Authority will not give any figures which are compiled and consolidated from confidential information, our answer is that no figures can at any time be available, for they are all compilations of individual reports received confidentially.

You next say "You emphasize your demands for statistical information classified into union shops organized by the Amalgamated Clothing Workers, the United Garment Workers, and open shops. Code authority reporting forms used by members of the industry do not include data so classified."

Senator COSTIGAN. Are you quoting something that you requested there?

Mr. CURLEE. I am quoting there from Mr. Vincent's preceding letter to which this is a reply.

Senator COSTIGAN. In other words, he states that you requested a classification showing wage data with respect to union shops and nonunion shops?

Mr. CURLEE. Yes, sir. We had asked for this complete data broken down into union shops organized by the Amalgamated Clothing Workers, union shops organized by the United Garment Workers, and open shops.

Senator COSTIGAN. What was the importance of that request?

Mr. CURLEE. The importance of that request was the conflict that has been mentioned before in the testimony, that is of the four markets which dominate the industry, which are generally organized by the Amalgamated Clothing Workers. Generally speaking, the rest of the country is not.

Senator COSTIGAN. You have been an open-shop operator for years, have you not?

Mr. CURLEE. Yes.

Senator COSTIGAN. Has there been any difficulty in discovering wages paid under union contracts with the Amalgamated? What was the mystery about those facts to you as a long-time and important operator of open shops?

Mr. CURLEE. The mystery about those facts is that the charge has constantly been made, and there have been intimations of it here, that our association is battling for a low wage standard.

Senator COSTIGAN. Has that not been true? You have already stated that you prefer to leave the industry in a state of laissez faire, to the uncontrolled operation of economic forces.

Mr. CURLEE. I tried to distinguish carefully, Senator, between my own unripe economic views and the policy of the association.

No, sir; it has not been the policy of the association to battle for a low wage standard, and we very much welcome a comparison of the average wage paid in the union shops in the country and the average wage paid in the nonunion shops in the country, and as to union shops, with a distinction between Amalgamated and the United Garment Workers. The code authority has that information and it keeps it secret. We are not permitted access to it.

Senator COSTIGAN. If the union wages were found to be higher than the nonunion wages, was it your purpose to endeavor to meet the higher scale?

Mr. CURLEE. We endeavored to meet the arguments that have been made against our association. Let me say that it is my firm conviction, for example, that the average earnings, annual earnings of employees, in the Curlee Clothing Co. are higher than the annual average earnings in the New York markets if you include in that the contract shops which complete their processes.

Senator COSTIGAN. Then was it your purpose to lower your wages? To use what you call the lower wages in your market as an excuse for lowering your own? I am curious to know what the object of your insistence on these data was.

Mr. CURLEE. No; it was not my intention to lower any wages. That calls for another digression, and that is the system—I will complete the reading of this letter if I may.

Senator COSTIGAN. I do not want to interrupt. If you prefer to answer after you complete the letter, that is entirely satisfactory.

Mr. CURLEE. If you will remind me of it.

The CHAIRMAN. I think you had better answer the question now because there seems to be some controversy.

Mr. CURLEE. The manufacture of clothing in the New York market has been standardized as to price. It has been divided into classes. There will be a coat no. 1, a coat no. 2, coat no. 3, and so forth. The same with vests, and the same with trousers. There are plans and specifications for the construction of each one. It has been determined that the price of a no. 3 coat by the manufacturer to the contractor for completing the processes shall be so many dollars, and a standard price for each one of those classes, and the specifications are pretty complete on those. So that the code authority may take a coat from any manufacturer and say, "Well, this is a no. 4 coat."

The process of standardization is not great in the rest of the country. That is not exactly true, because he may have some of the specifications required by a no. 4 and some by a no. 5, so they are able to say, "This lies between a no. 4 and a no. 5." In New York, a coat is a no. 4 or a no. 5, because there are no variations from the specifications. They take those garments and classify them according to the New York method. Then they go into the manufacturer's production costs and if they find his production costs lower than the contract price in the New York market, they say "You must elevate your wages so that your production cost will be so much." If so, he has complied with article 2 (b). If his production costs enough to conform to the New York market standards, he has complied with the code. That is the general process.

I do not say it is invariable in its application, but that is the aim, to equalize production costs and standardize them with the New York market.

That is one reason. There are many reasons for us to want this data. They are in control of the whole industry.

Senator COSTIGAN. Let me interrupt for a moment. Does the statement that you want to equalize production costs, have in view that if you find higher wages being paid in another branch of the industry or another locality, you would have in mind paying wages not in excess of those paid elsewhere, with a view to equalizing the costs?

Mr. CURLEE. Senator, that is not my view. That is the view of the Code Authority.

Senator COSTIGAN. What is your view?

Mr. CURLEE. My own view is that any manufacturer complying with the code wages and hours should be enabled to produce his commodities as economically as he can, because there are a great many factors in it other than wages and hours.

Senator COSTIGAN. Assuming that the public interest calls for a decent level of subsistence in the form of somewhat higher wages, are you opposed to the principle of equalizing costs on a basis of decent subsistence for the worker?

Mr. CURLEE. I think that would be a wrong basis, Senator. I believe that if we accept the principle of minimum wage, that it ought to be attacked directly as it is in the code, of fixing a minimum wage, and not indirectly as the Code Authority does in its application by attacking it from the standpoint of production cost.

Senator COSTIGAN. But you are personally opposed to the principle of a minimum wage?

Mr. CURLEE. Personally, as I said to Senator La Follette, it is a moot question and I am not qualified as an economist, but my own immature view is that it is not the best for all concerned.

Senator COSTIGAN. And your personal influence has been thrown in that direction?

Mr. CURLEE. I would not say it has been thrown in that direction at all. My personal influence——

Senator COSTIGAN (interrupting). You have merely discussed it academically?

Mr. CURLEE. It has been thrown against any such abuses as we find in the Clothing Code Authority and as they exist in numerous industries.

Senator COSTIGAN. Have you amplified fully your views or your objections to this effort to equalize costs of production?

Mr. CURLEE. No, sir; I think not, Senator. There are a great many factors that enter into the cost of production other than wages. If a manufacturer can pay fair wages and produce his product at a low cost by more continuous processes or more continuous operations, or the massing of the proper amount of raw materials in getting continuity of production, of improved manufacturing processes, I believe he should be entitled to do that, and that such standardization as there is should be in the wages and not in the production cost. That is my view of it. I believe a manufacturer may pay relatively high wages and have low production costs. Another member may pay relatively low wages and have high production costs.

Senator COSTIGAN. What has been your experience? Have you paid relatively high wages and had low production costs?

Mr. CURLEE. We have at all times paid the highest wage level in the local market we were in.

Senator COSTIGAN. Do you mean by that the St. Louis market?

Mr. CURLEE. In the St. Louis market and in all others, we have paid the highest level obtaining in the needle trades. The production costs to the company have been satisfactorily low, consistently with the wages.

Senator COSTIGAN. The implication in your remark is that in some branches of your work you have not paid as high wages as are paid in some others? As I understood your suggestion, it was that in the needle branch of the industry you paid higher wages relatively than in some others. Was there any portion of your production as to which you paid relatively lower wages than were paid in any other locality competing with yours?

Mr. CURLEE. Until we had code authority figures, of course those facts are difficult to obtain. I believe there is perhaps now a lower percentage of the employees of the Curlee Clothing Co. paid the minimum, or from 40 to 45 cents, than most of the other companies, perhaps all of them.

Senator COSTIGAN. Did you say a lower or a higher?

Mr. CURLEE. A lower proportion of the employees. A very low proportion of employees earning between 40 and 45 cents. I mention that because the code authority in the data that you mentioned a while ago in this hearing has broken it down into those operations. Those earning between the minimum of 40 and 45, and then on up in the brackets of 5 cents each. But as to that, Senator, I am unable to give you the information, but if the code authority could be induced to release that information, our association would be very much pleased.

In the beginning of this book——

Senator COSTIGAN (interrupting). To which book do you now refer?

Mr. CURLEE. This green book.

Senator COSTIGAN. What is that—so that the record will be clear?

Mr. CURLEE. This is the statement of the Industrial Recovery Association which was filed in the recent code hearings that I have spoken of.

We have proposed twice an amendment lifting all veils of confidence and secrecy and making all information available to all members of the industry. I believe that is the proper way to do it.

Senator COSTIGAN. Has your recommendation in that respect been resisted by others in the industry?

Mr. CURLEE. It has been ignored, Senator.

SENATOR COSTIGAN. Of course you did not expect the veil of secrecy to be lifted until there was general concurrence by those who had furnished information in confidence?

Mr. CURLEE. I earnestly hoped that the code might be—and I still hope that it may be—amended so as to make all figures available and open to everyone.

Senator COSTIGAN. You see no objection to full information for public use?

Mr. CURLEE. I can see objections that can be raised to any course, but I believe it would be less objectionable than the present course. I do believe it is a serious disadvantage and an unfair disadvantage to our element of the industry for the other element to have all of this data from the whole industry and our element to be denied all of this data.

Senator COSTIGAN. It is rather an unusual request to Congress to have all confidential matters made public. If my experience corresponds to that of other Members of Congress, usually business is extremely sensitive about what it terms "trade secrets" and "business secrets."

It is somewhat refreshing to some of us to hear the suggestion that there are no barriers to full publicity with respect to wages and costs and other factors in production. Is that your recommendation as to this industry?

Mr. CURLEE. Yes, sir. That is an unusual request, but we are confronted with an unusual situation, Senator.

Senator COSTIGAN. What makes your situation more unusual than that in other lines of business?

Mr. CURLEE. I do not know to what extent this may be duplicated in other code authorities, but it is unusual measured by all past standards in that one dominant element of the industry has complete statistical data concerning the whole of the industry, and it is not available but is denied to the subject element of the industry. That may not be unusual now, but it is unusual judged by past standards.

Senator COSTIGAN. Mr. Curlee, if I understood your statement, it was to the effect that the reports handed you by the code authority were based on pay rolls of 99,000 workers out of 125,000 in the industry. And am I correctly advised that it was based on between 1,400 and 1,500 establishments, and that it had a special study of 50 of the largest establishments, 50 of the largest contractors, and 50 of the small group?

Mr. CURLEE. Pardon me for one correction. It may not be 50——

Senator COSTIGAN (interrupting). Approximately.

Mr. CURLEE. But a selected number.

Senator COSTIGAN. A cross section of a number of the principal markets and general survey of the remainder. Was that the substance of what the code authority reported?

Mr. CURLEE. It purported to be that, Senator.

Senator COSTIGAN. It is your feeling that a report of that sort is not representative?

Mr. CURLEE. That is my feeling very distinctly; yes, sir.

Senator COSTIGAN. Is your complaint because there was not a complete disclosure, or because in the light of what might be disclosed without violation of confidence, the code authority failed to give you the information you sought?

Mr. CURLEE. I think the complete data for a whole calendar year in their position would have been very useful and enlightening, and the results would have been different.

Senator COSTIGAN. With or without confidential information included?

Mr. CURLEE. In this particular request, we asked for no waiver of confidence. We wanted both geographical and other data broken down. We had requested an amendment lifting all seals of confidence, but we accepted conditions as they are in this request and made this request pursuant to the limitations now imposed by the code.

Senator COSTIGAN. Ordinarily one would assume that a report of so sweeping a nature as this would be adequate for your purposes; without challenging your judgment as to its sufficiency, I am endeavoring to find out the precise lack of representation as you view this report.

Senator CLARK. It would be very important to find out exactly where the workmen were omitted from the reports, and where the establishments omitted from the report would be.

Mr. CURLEE. Yes, Senator. And there are many defects in that. Here was a group, a dominant group, proposing a sweeping amendment; and instead of presenting all of the data in its possession, presented selected or what they called "representative" data.

Senator COSTIGAN. In other words, you were suspicious that the omission of some data concealed from you some facts which you were eager to obtain?

Mr. CURLEE. Oh, yes, sir.

Senator COSTIGAN. You had a feeling that the report as made was not either adequate or fair?

Mr. CURLEE. Senator, I do not believe that any given party to an issue—as I have stated frankly in my letter to Mr. Vincent—should withhold all available data or a part of it and say, "I will select that which I consider representative." The proponents of this amendment invoked the aid of the Research and Planning Division, and as testified by Mr. Herwitz himself, told Mr. Herwitz what he had considered representative data. If we had an opportunity to be heard, we would have considered other data representative, too.

Senator COSTIGAN. Who is Mr. Herwitz?

Mr. CURLEE. Mr. Herwitz is comptroller of the Clothing Code Authority.

Senator COSTIGAN. Do you make any specific charge of unfairness in providing the data?

Mr. CURLEE. My specific charge is that the data does not prove anything. As to its unfairness, whether consciously or not, it is unfair to the industry as a whole to select as representative data a short time of the peak production in the eastern markets.

It is a well-known fact, Senator, that there is greater continuity of production in the hinterland than there is in the great markets. There are several reasons for that. In the big markets the work is done very largely in the contract jobs.

I read last Friday from some of the public documents from the Labor Department—I believe it was—and I read certain strictures from certain sources on that, and the fact is that they have a highly seasonal peak-production period, with low valleys. Of course, there is a seasonal variance throughout the country, but that is much less in the completely integrated organization.

There are several reasons for that. There is a large reservoir of trade labor to be drawn from in the great markets. In the hinterland there is no such reservoir, so it is necessary for a manufacturer to have a permanent personnel and to make his operations continuous. They do that to a great extent.

I asked Mr. Herwitz when he was on the witness stand if there was not a seasonal variation, and he said there was. I asked him if that seasonal variation differed in different sections and areas. He said he did not know—that he had compiled no statistics on it. I asked him if he did not think that would be an interesting subject of inquiry for a controller, and he said it would but that he had made no such study.

This would reveal that. The statistical data now in the possession of the code authority for the full calendar year 1934 would show that to us very clearly, if it exists. We contend that it does exist. We contend that the annual wage paid to a worker is more important than the hourly wage paid, and we believe that the annual wages in the hinterland will compare favorably with annual wages in the contested markets. I am asserting what we believe. We are anxious to know.

Senator COSTIGAN. In that connection, could you give the average annual wages of certain workers in your industry?

Mr. CURLEE. I do not believe I could, Senator, nor could I give it for the New York market.

Senator COSTIGAN. Have they increased since the code was adopted?

Mr. CURLEE. Yes, sir.

Senator COSTIGAN. The annual wages have increased, as well as the hourly wages?

Mr. CURLEE. Yes, sir. Because there has been a pretty fair continuity of production throughout, and that continuity has not been diminished by the code, and the hourly wages have been increased, so that would necessarily result in an increase in the annual wage.

I have just read a quotation from Mr. Vincent's letter in which he states that the reporting forms on which the reports are made to the clothing code authority do not contain the data, organized by the Amalgamated Clothing Workers, United Garment Workers, and the open shops.

Senator COSTIGAN. Was that true?

Mr. CURLEE. The answer appears right here. I will continue the letter. [reading:]

This is an accurate statement concerning the reporting forms submitted periodically by members of the industry. The code authority, however, does possess the information requested. The information in possession of the code authority is not limited to that obtained from members of the industry on reporting forms. The code authority procures information through a large staff of field auditors it keeps employed at large expense examining the books and records of members of the industry. The reports of these field auditors give the classifications which we have requested. You are, therefore, in error in stating that the information is as available to us as it is to the code authority. If this is not proper information it should not have been reported by the field auditors. If it is proper information it should be available to the industry in classified form not identifying any particular manufacturer.

You say in conclusion that the very voluminousness of the data makes it quite impracticable to require the code authority or the Research and Planning Division to do more than to produce representative pay-roll data. The voluminousness of the reports, Mr. Administrator, may make it impracticable to classify them thoroughly in time for the hearing on February 1. They do not make it impracticable if the proper time and deliberation are given to this inquiry demanded by the magnitude of the interests involved. If speed is of the essence and a hasty determination of these issues is required, the information available cannot be analyzed. If a correct conclusion of the issues is of the essence it is impossible to have a hearing on February 1.

You say: "If upon the hearing it appears that there are material facts which we should have before approving or disapproving the proposed amendment, and that such facts are available, you may be assured that no action will be taken by the National Recovery Administration without full opportunity being given to present such facts."

How can this be made to appear, Mr. Administrator? If we do not have the facts we cannot prove to you their materiality. The code authority, which proposes the amendment, doubtless have gone over all the facts and will present to you such as they deem material. We are entitled to all the facts in order that we may present to you those facts that we consider material.

The objections to giving us the facts seem to be four: (1) That the information we request is confidential; (2) that it is immaterial; (3) that it is not available; and (4) that there is not time in the next 9 days to compile the data. As to the first objection, if these data are confidential and cannot be made public in the form of consolidated and classified statistics the collection of them is a futile waste of time and money. As to materiality, if you will see that the data are furnished us we shall be able to show you their materiality. Obviously, we cannot show you now the significance of figures not in our possession and unknown to us. As to availability, further inquiry by you will disclose that the data we ask are available. As to the time element, we respectfully submit that it is better to reach a correct conclusion after proper deliberation than to hold a premature hearing 9 days from now.

That is the close of that letter.

Senator COSTIGAN. Mr. Chairman, the issue raised between the witness and Mr. Vincent would seem to require that Mr. Vincent, at the proper time, be invited to testify.

The CHAIRMAN. Mr. Vincent, I understand, is here and he will be the next witness.

Senator COSTIGAN. It will save time in cross-examination to call him.

The CHAIRMAN. Mr. Vincent, I understand, is in the committee room and it was the intention of the chairman to call him as soon as we finish Mr. Curlee.

Mr. CURLEE. I was discussing the constitutional organization of the code authority. I think that is important, Mr. Chairman, and I would like to comment some more on that.

First, I think I will take in order some parts of the report of Dr. Lindsay Rogers. We have had a great many statistics in this hearing, some of them conflicting, some of them perhaps significant, some of

them not significant, but in the report of Dr. Lindsay Rogers, who reported the code——

Senator KING (interrupting). What do you mean by reporting the code?

Mr. CURLEE. He conducted the hearings on the proposed code, and then sent the report with his approval and an explanation.

Senator KING. Was he in the employ of the Government?

Mr. CURLEE. He was a deputy administrator; yes.

The CHAIRMAN. And he was succeeded by Mr. Vincent?

Mr. CURLEE. I think there was another intervening.

Dr. Rogers in his report said:

> The report for the men's clothing industry, approval of which is recommended herewith, will apply to an industry composed of more than 2,000 manufacturing units employing 150,000 workers.

Mr. Herwitz testified in the February 1 hearing that there are now 125,000 workers attached to the clothing industry. If both of those figures are correct, it means a decrease of 25,000 in the number of workers since the code was approved.

The CHAIRMAN. What was that statement, Mr. Curlee?

Mr. CURLEE. I say, if the statement by Dr. Lindsay Rogers that there were 150,000 workers employed in the industry at the date of the approval of the code is correct, and if Mr. Herwitz' statement is correct that on February 1 there were 125,000 workers employed in the industry, it means a decrease of 25,000 persons employed in the industry since the code was adopted.

The CHAIRMAN. Mr. Richberg in furnishing to us the information brought up to date in the men's clothing industry stated that in March 1933 there were 111,700, that in December 1934 there were 116,000, and that in January 1935 there were 124,000, and that the wages have increased from March 1933, $1,511,000, and in January 1935, $2,150,000.

Mr. CURLEE. Those are subject to so many variable factors, Senator, that they must be accepted with caution. The point I was making here is that if there were 150,000 at that time, and the figures submitted by Mr. Richberg are correct, that there are 124,000 in January, that indicates a loss of 26,000.

As to the wages being increased, that is also subject to the question of the number of hours worked. After all, the important thing is the annual earnings, and I do not believe we have any figures in these reports on the annual earnings of employees. I believe so far as I know they are all based on hourly earnings.

Dr. Rogers further said:

> Certain possible grounds were suggested but on analysis all of them disappeared. There is no subdivision on a geographical basis. To be sure, the Clothing Manufacturers Association has its main strength in the four great markets of Chicago, New York, Rochester, and Philadelphia, but its members are in many other markets as well. The Industrial Recovery Association has its main strength outside of the markets mentioned, but among its members are to be found manufacturers in Chicago, New York, Rochester, and Philadelphia.

Coming to the organization of the clothing code authority, I think you will be interested in Dr. Rogers' analysis of that and his reasons for constituting a code authority as he did.

The administrative agency must be absolutely neutral in respect of the cleavage referred to and must show a proper regard for the fact

that administration in the large cities, particularly in respect of the manufacturer—contractor system presents problems different from the problems of administration in other sections of the country where manufacturing is direct and where labor may be less skilled. Neither of the two groups between which, as has been paid, save for the labor relations, only artificial diversions of interest exist, should be in a position to dictate to the other group.

The code presented by the Industrial Recovery Association suggested an administrative and advisory agency which would consist of five representatives from the Industrial Recovery Association and five members from the Clothing Manufacturers Association, in addition to a representative appointed by the National Recovery Administration. The manifest purpose of this separate representation was to protect the members of the Industrial Recovery Association in respect of interest which they felt required protection. That was a legitimate objective, but to reach such an objective through the methods proposed would have meant a division of responsibility with resulting hesitation and inefficiency.

For the administration of a code, there must be an administrative machinery in respect of which the responsibility is not divided. When the codes were submitted to the Administrator, administration by a trade association was contemplated. The device of the administration by a code authority had not yet evolved.

The code as recommended provides for a code authority but with proper representation for divergent interests in the industry on a basis to be discussed later in this report and which it is believed will quiet the fears of the Industrial Recovery Association.

Now, I come to the discussion of the constitution of the code authority:

As has been said above, a code submitted by a trade association composed largely of union manufacturers but intended to apply to a whole industry, must give representation on its code authority to nonunion sections of the industry. This problem has, it is believed, been successfully resolved by providing for a code authority constituted as follows: The Clothing Manufacturers Association appoints 10 members, 5 members of the code authority are to be selected by the Clothing Manufacturers Association to represent manufacturers who are not members of that association, that is, the manufacturers who are members of the Industrial Recovery Association.

That seems perfectly clear.

Ten members to be appointed by the Clothing Manufacturers Association or the U. S. A. Association, and five members, not members of that association, but to be selected by the members of that association. These five representatives will, it is believed, be more than the Industrial Recovery Association is entitled to under the basis of the number of workers its members employ or its annual value of production.

Designation of these representatives by the Clothing Manufacturers Association will, it is anticipated, put the responsibility on that association to give the fairest part of representation to the part of the industry which is not within its membership.

And further:

It is provided that the 15 thus chosen may add two other members to the employers group. In this way independent factors in the industry can be given representation. Provision is made for the appointment of five labor representatives by the Administrator on the nomination of the Labor Advisory Board.

It is our contention that no code authority so constituted can be truly representative of an industry. Ten members of the U. S. A. Association, and five persons not members of it to be selected by that

association, and two persons to be selected by the 15 so selected is the code authority group.

I mentioned on Friday the way that had worked out.

The CHAIRMAN. Whom did they select as the five members of your association? Were they representative people?

Mr. CURLEE. Will you pardon me just a moment, Senator? I think I have a list of those.

The CHAIRMAN. Were they representative men?

Mr. CURLEE. Of the five, I do not believe that five ever became members of the association. Mr. Sol Heuman, of Rochester, N. Y., was a member of the code authority, but he had formerly been a member of our association, but as the result of a strike against him in Rochester he was organized under the Amalgamated Union and resigned from the association. I can say that Mr. Heuman is a man of the highest type.

The CHAIRMAN. He was selected as one of the five?

Mr. CURLEE. He was selected as one of the five. Mr. George Henry, of Cincinnati, was represented as one of the five.

Senator LA FOLLETTE. What company is he connected with?

Mr. CURLEE. The Sincheimer Co.

Senator LA FOLLETTE. Are they a member of your association?

Mr. CURLEE. They are a member of our association and Mr. Henry is a manufacturer and a man of the highest type. Sol Heuman, as I say, could not be called now, as much as I admire him personally, representative of this association because he has resigned from the association.

Senator COUZENS. Why did he resign?

Mr. CURLEE. I have not been informed, Senator, because—I presume because his shop was unionized under the Amalgamated as a result of the strike.

Senator LA FOLLETTE. Were there any others that either now or were formerly connected with your association, put upon the code authority besides the two that you have mentioned?

Mr. CURLEE. Let me refer to this list and see. Apparently those were the only two——

Senator LA FOLLETTE (interrupting). Were there any others that were invited who declined to serve?

Mr. CURLEE. Yes, some other invitations were extended.

Senator LA FOLLETTE. Will you tell me to whom they were extended?

Mr. CURLEE. An invitation was extended to me, and as Mr. Hillman stated a few days ago, I have no personal knowledge, but I am informed that an invitation was extended to Mr. Schoneman and that an invitation was extended to Mr. Greif.

Senator LA FOLLETTE. Would that have made five if they had all accepted?

Mr. CURLEE. I do not know that the invitation was extended to all. These were extended one at a time. I do not know that all of them were invited.

The CHAIRMAN. Did they decline?

Mr. CURLEE. They declined, yes, sir.

Senator CLARK. Was there any suggestion ever made to your association to pick out five men to go on the code authority?

Mr. CURLEE. No, sir.

Senator LA FOLLETTE. Do I understand your point to be that you objected to the persons who were invited to represent your association as not being represented or qualified to serve?

Mr. CURLEE. Not at all, Senator. I said Mr. George Henry—I described his qualifications. I say that I thought that Mr. Heuman cannot now in the circumstances be considered as representing the association.

Senator LA FOLLETTE. Take the other four that you mentioned. Is it your criticism that they were not representative of your association or qualified to represent it?

Mr. CURLEE. Apparently the other four are Elmer L. Ward, a resident of New York City, if I am correctly informed——

Senator LA FOLLETTE (interrupting). I meant the other four that you mentioned as having been invited to serve, as representative.

Mr. CURLEE. Oh, as having been invited? As I say, I do not know that the four were——

Senator LA FOLLETTE (interrupting). You said that you had heard that they were invited. For the moment, let us assume that they were. Is it your complaint that those gentlemen who were invited were not representative of your association or qualified to represent it?

Mr. CURLEE. I made no such objection. I do want to make that clear. I did say that according to my information they were invited one at a time. So far as I know they declined one at a time. I do not know that all of them were ever invited to become members at one time. I am not informed about that.

Senator LA FOLLETTE. I am a little bit confused, because in one instance I gathered the impression from your testimony that you were critical because your association was not represented, and then I naturally was prompted to ask the question as to whether or not you thought the individuals who had been invited were not properly qualified, or for some other reason you objected.

Mr. CURLEE. No; I think they are properly qualified.

Senator COUZENS. Why did you decline?

Mr. CURLEE. Why did I decline?

Senator COUZENS. Yes.

Mr. CURLEE. First, I knew that we would be an impotent minority with a code set up as that. In the second place, I was in doubt about it because I did not believe in the system that was proposed. That goes back to the issues at the formation of the code. It was perfectly apparent and was pointed out in the brief which I filed on Friday that there was a code set up with some vague provisions which could not be clearly interpreted and uniformly applied, and which depended upon a code authority chancery court to settle equities, and that they would have unlimited power. I did not believe in the system as a whole and did not want to become a party to it, and that impression has been confirmed by subsequent events.

The CHAIRMAN. Did I understand your main objection is that you thought that your organization ought to have equal representation with the other organization in the administration of the code, and that secondly that you thought that your organization ought to make their own selection of your representatives?

Mr. CURLEE. Senator, we asked in the beginning for equal representation, but when the argument was raised about what proportions there were, our proposal then was to select the members proportionate

to volume by number of employees or some other equitable basis, but particularly we objected to a system under which our members or representatives should be selected by the other side.

Senator LA FOLLETTE. Assume, if we may, that your association had been given the privilege of nominating five persons to serve on this code authority and you had been included among them, would you have accepted?

Mr. CURLEE. I do not think I would have accepted under any circumstances, Senator, because I did not believe in it. I did not want to be responsible for the things that I believed were inevitable and which since have happened.

Senator LA FOLLETTE. Then, as I understand it, your objection does not go so much to the way in which the code authority was constituted, but goes to the code itself and the question whether there should have been a code at all or not.

Mr. CURLEE. My objection goes to the method of selection and also to serving as a minority on a code authority organized with the powers and responsibilities that this one had.

Senator LA FOLLETTE. Assuming for the moment that is a correct statement of fact, that your association does represent upon almost any criteria you wanted to take of testing it, a minority, how would you suggest under any code that a minority could be represented?

Mr. CURLEE. By minority of the members on the code.

Senator LA FOLLETTE. But I just gathered from what you said a moment ago that you objected because a minority would be a minority and would be at the same time charged with responsibility.

Mr. CURLEE. Senator, my objection was—you asked why I declined. I declined because I did not want to hold a minority post on the code authority at the sufferance of the other association.

Senator LA FOLLETTE. But I am asking you now, and I thought you said you would not have accepted under any form of selecting the representatives of your association, on the ground that they would be a minority and therefore you did not want to accept responsibility in the situation where you would be a minority, and I was trying to find out from you as to any constructive suggestion you had as to how an element in any industry—just for the moment getting away from the clothing industry—could be represented if as a matter of fact they represented a minority of the industry by whatever criteria you arrive at that fact.

Mr. CURLEE. I believe that is a little involved, but I have two objections to it. I mentioned one a moment ago, that I did not want to be a minority holding office at the sufferance of the majority.

And I had another objection, that a code authority constituted as this was, with the powers it had, any minority would be an impotent minority, and I did not want to be on the minority. That goes to any method of selection.

Have I made myself clear? I had two objections.

Senator LA FOLLETTE. You had two objections, but I am trying to find out which was the more important in your mind?

Mr. CURLEE. They were both important. The whole set-up seemed to offer no hope for any constructive accomplishment.

Senator LA FOLLETTE. But as I understood you, even if you had been selected by your own association, you as an individual would have declined to serve.

Mr. CURLEE. I would have as an individual; yes. I will be frank about it.

Senator LA FOLLETTE. If that was a representative attitude of the other members of your association, it would have been pretty difficult under any method of selecting representatives to have them represented on the code authority, would it not?

Mr. CURLEE. I cannot speak for the other members or what their reasons were. I can see the difficulty in it, though.

Senator CLARK. Colonel, if I understood you correctly, you had two objections—one of them was to the majority selecting the minority representatives. That would have been removed by permitting the minority to select their own representatives instead of having them selected by the adverse party. Is that correct?

Mr. CURLEE. That is correct.

Senator CLARK. Your other objection had to do with the whole constitution of the code authority, and that would not have been removed no matter what method of selection had been pursued.

Mr. CURLEE. That is correct.

Senator LA FOLLETTE. Under your statement, it would be pretty difficult to get any representatives of a minority, it seems to me.

Senator CLARK. Not necessarily. Mr. Curlee said that would be his present attitude, and it has been testified here before that the minority as a minority was never given any opportunity to make a selection.

Senator LA FOLLETTE. That is true; but assuming that Mr. Curlee's attitude is reflected by other members of his association, it would be pretty difficult under those circumstances to find any basis for selection to secure minority representation on the code.

Mr. CURLEE. Senator, I do not believe that would have been insurmountable. Mr. George Henry took a different view and he was invited and accepted. I feel sure that it might have been possible.

The CHAIRMAN (interrupting). Would you have accepted if your organization could have chosen 5 members and the other organization could have chosen 5 members?

Mr. CURLEE. Senator, Mr. George Henry took a different viewpoint, but so far as I am concerned, I would not have wanted to serve.

The CHAIRMAN. You just did not want to be on the administration of that code?

Mr. CURLEE. That is my own position.

The CHAIRMAN. Now, let us get to something else.

Senator BARKLEY. As I understand, there were 22 members of the code authority altogether.

Mr. CURLEE. There were what?

Senator BARKLEY. Twenty-two members.

Mr. CURLEE. It is either 21 or 22.

Senator BARKLEY. Assuming it is 22. Five of those twenty-two were allotted to labor?

Mr. CURLEE. That is correct.

Senator BARKLEY. Leaving 17. Those 17 were divided, 10 for which association?

Mr. CURLEE. The U. S. A. Association.

Senator BARKLEY. What does that stand for?

Mr. CURLEE. The Clothing Manufacturers Association of the United States of America.

Senator BARKLEY. That gave their selection 10. Then that left seven. Were the other seven allocated to the other groups aside from the U. S. A.?

Mr. CURLEE. No. The plan was for 10 to be members of the U. S. A. Association; 5 to be members of the Industrial Recovery Association but to be selected by the U. S. A. Association; and then 2 to be selected by the 15 so selected.

Senator BARKLEY. Did you know of your own knowledge whether anybody in your association, your group, participated in the selection of the five allocated to it?

Mr. CURLEE. There were never five selected from the association.

Senator BARKLEY. There were five selected, including those who declined, as I understood. Some 3 or 4 declined to serve, including yourself?

Mr. CURLEE. That is my information.

Senator BARKLEY. How many actually from your group did accept and serve?

Mr. CURLEE. George Henry and Sol Heuman were the only two so far as I know who accepted.

Senator BARKLEY. Have you furnished the committee a list of all those who were selected and declined, in addition to yourself?

Mr. CURLEE. I have not furnished any such list.

Senator BARKLEY. Can you do that?

Mr. CURLEE. I have no way of knowing that, Senator. He asked me if Mr. Schoneman and Mr. Greiff had been specially invited to join. I told them I did not know, but my information was that they had been, but as to any others that were invited, I do not know.

Senator BARKLEY. It may not be important, but could you obtain that information? You are the attorney for the association.

The CHAIRMAN. If you can insert it in the record, will you do so?

Senator CLARK. Would it not be easier to obtain that from the Code Authority? They ought to know whom they invited.

Senator BARKLEY. Wherever it is obtained, I think it can go in the record.

Mr. CURLEE. Well, this can go in the record. I am informed that Mr. Greif and Mr. Schoneman at different times were invited to become members of the Clothing Code Authority.

The CHAIRMAN. All right, Mr. Curlee. Proceed.

Mr. CURLEE. I want to discuss, if I may——

The CHAIRMAN (interrupting). I would like to have, if Mr. Vincent is here, Mr. Henderson, to have furnished to us the names of those that have been invited.

Mr. HENDERSON. That will be furnished.

Mr. CURLEE. I would like to discuss now something of the methods and machinery of the code authority. If any of you have the patience to read this book which endeavors to show what section 2 (b) means, you will know the vast latitude in the matter of application and interpretation.

Senator LA FOLLETTE. Mr. Curlee, is that 2 (b) or 2 (d)?

Mr. CURLEE. That is a little confusing. Article 2 (b) as in "berry" fixes the wages in the higher paid brackets. That is the wage provision. Unfortunately, article 2 (d) as in "dust" is the one which provides that a committee shall be constituted by the code authority to see to the application of the foregoing provisions.

Senator LA FOLLETTE. I would just like to say to the stenographer that I hope that those two letters "b" and "d" will be separate in the record, because I find it is pretty confusing.

Mr. CURLEE. I think it will be very difficult to do it, because there is a lot of confusion from time to time in the typing. But I believe the context, if you understand, will make it clear that one is a provision of substantive law and the other constitutes a committee, and judging from the context I do not believe it will be difficult to distinguish it.

Senator COSTIGAN. Colonel Curlee, before you proceed with a new branch of your testimony, may I ask you to return to the advertisement which you quoted the other day from the New York Times, signed by several hundred employers in the smaller activities of the industry at different places over the country? You recall the advertisement, do you not?

Mr. CURLEE. Yes, sir.

Senator COSTIGAN. Was it your intention to leave with the committee the impression that the contractors represented in that advertisement, have been paying lower wages than are paid in what you term the "hinterland", where your own activities are centered?

Mr. CURLEE. That information, Senator, is all in the possession of the code authority. I can only conjecture, but I will give it as my answer that in some instances in the hinterland they pay higher wages than are paid by those contractors, and in other instances they pay lower wages. The wages are—those vary everywhere. I do not mean to lay down any rule at all.

Senator COSTIGAN. Have you seen the latest figures furnished by the deputy administrator as to average hourly wages for the men's clothing industry?

Mr. CURLEE. Are those the figures submitted at the February 1 hearing? If they are, I have seen them.

Senator COSTIGAN. I am not certain about that, but I have some figures here , the date of which I have not before me, indicating that the average hourly wage for the industry as a whole is 66.2 cents, that for the 50 largest contractors, it is 67.4 cents; for the New York contractors, 74.8 cents; and for the Philadelphia contractors, 70.9 cents. Do you know whether those reported figures are accurate or inaccurate?

Mr. CURLEE. I have never seen those figures, Senator. I do not know the source and I could not say anything about them. What they purport to be. Do they purport to be figures published by the code authority?

The CHAIRMAN. By the deputy administrator. They are supposed to cover the contractors in those areas which are not represented to any substantial extent by the group with which you are affiliated.

Senator KING. Senator, do they state the weekly wage? The weekly envelop or just the hours?

Senator COSTIGAN. That fact is not stated in the material I have before me.

Mr. CURLEE. And the annual wage is even more important.

Senator COSTIGAN. Confining ourselves to this hourly wage, are you able to testify whether these further figures which I have before me are correct? That the Wolf Bros. firm average an hourly wage of 43.3 cents; Finklestein, 44.2 cents; and Reiner—if that is the correct

way to pronounce it—65.1. The last three firms, I understand are members of the group with which you are affiliated.

Mr. CURLEE. I believe they are.

As to those figures, I have no information at all.

Each one of them is a battle ground for an extended trial. I have been informed that the Wolf Bros. shop was a new shop, I mean an entirely new factory just recently opened up, and that their wages were of course relatively low, having all beginners. As to that, I will say I have no knowledge. I have been told that, but I do not know.

Senator LA FOLLETTE. Where is the plant located, Mr. Curlee?

Mr. CURLEE. In Troy, N. Y. But I will say only this, if I am asked about any particular figures, I will say that every one of the situations furnishes a separate battle ground itself, and hotly contested battle ground. I do know that these issues as have many other, have been pending before the code authority for some time.

Senator COSTIGAN. When you say "battleground" what have you in mind? That the facts are not as reported or that the wages paid ought to be reduced or increased?

Mr. CURLEE. There are many of those issues raised. Sometimes they are issues of fact. In other cases they are issues of this most obnoxious feature of it called "equities." This 2 (d) committee is given the power—rather, it is not given the power by the code but it has assumed the power to adjust equities. All the code says about that is "The Men's Clothing Code Authority may appoint a committee to supervise the execution of the foregoing provisions." That is all the power given them in the code. We have certain provisions.

And in another section we have a committee appointed to supervise the execution of the provisions.

Now comes out an interpretation which interprets article 2 (b) and tells what it means, and I will have to go into that further—the matter of this flood of legislation under the guise of interpretations—but this particular interpretation explains what it means, and that says that if the strict application of this interpretation shall prove inequitable in any case, the complaining party may take it up with the 2 (d) committee. Not defining their powers after it is taken up, but merely stating that they may take it up with them.

The committee has assumed the powers of a court of chancery and adjusts equities. There is no body of principles on those equities, and there is only one that has been standardized, as I said a while ago, and that is the matter of production costs. I would not say that was made uniformly applicable as I said a while ago, but that is one of the recognized equities. The other equities are still vague and uncertain.

Senator COSTIGAN. Is equity itself not a principle?

Mr. CURLEE. I believe, Senator, as one who was once a law student, that courts of chancery have evolved a system of equity jurisprudence year by year and century by century, and that the courts recognize themselves as bound by certain equitable rules, principles and maxims which are an evolutionary growth, but here is a new court of chancery composed of laymen projected into a vacuum, and they work out their own equities, in other words, they are not trammelled by any limitations so far as their self-delegated powers are concerned. As I say, the code has not delegated any such powers, but they have been delegated by their interpretations.

Senator COSTIGAN. Just what other questions are there? An implication has been left here that the weekly wages and the annual wages are substantially higher in cases where a lower hourly wage is being paid by you and your associates. Do you confirm that as a fact throughout the men's clothing industry?

Mr. CURLEE. Oh, no, Senator. I meant to lay down no such uniform rule as that. I did say that in certain cases where a comparatively low wage was paid, through comparative continuity of production that there would be a higher annual earning than in another shop where a comparatively high wage was paid and comparatively intermittent production.

Senator COSTIGAN. In other words, you are dealing with theoretical conditions?

Mr. CURLEE. I would not call it theoretical because I would say as a general principle—I would assert my belief that in the hinterland the annual wages are higher relatively into hourly wages than they are in the congested markets. The code authority, of course, will demonstrate that. I dislike to guess about those things. I assert my belief, but the facts are all in the possession of the code authority and we have never been able to get them.

Senator LA FOLLETTE. I understood you to say earlier, Colonel, that the annual wages in the Curlee Clothing Co. had increased since the codes went into effect.

Mr. CURLEE. That is correct.

Senator COSTIGAN. You also stated that you have no objection so far as your association is concerned, to a minimum of 75 cents an hour provided such a minimum is uniform throughout the industry.

Mr. CURLEE. Exactly correct, Senator. If we can be relieved of all of these vague and nebulous provisions in the higher brackets which are not capable of uniform application, we will accept any wage that any element of the industry will impose. That has been the platform of our association from the formative days of the code in Washington.

Senator BARKLEY. Have you testified or can you testify as to the percentage of increase in wages for the workers of the group which you represent since the adoption of the codes?

Mr. CURLEE. I have no figures on that.

Senator BARKLEY. There has been an increase?

Mr. CURLEE. Oh, yes.

Senator KING. How do the wages, say in 1932 or 1933 and 1934, compare with the wages in 1927, 1928, and 1929?

Mr. CURLEE. There was an increase, if I may break that down and get what you mean. The wages in 1932 were relatively low. They had reached a low point, I believe. There was a revival of business in 1933, and then the codes came along, and this revival of business and the codes both brought about an increase in wages then.

As to how wages in 1933 after the increase would compare with those during the high production years, I have no figures on it, Senator.

The CHAIRMAN. Mr. Curlee, how much longer do you think you will take before you finish?

Mr. CURLEE. Mr. Chairman, there are a number of things I had to discuss which I would like to take up seriatim. There are many things that I have not yet had an opportunity to discuss.

The CHAIRMAN. How much longer would it take you provided we do not interrupt you too much?

Mr. CURLEE. I think it would take, if I am not interrupted too much, I could close—if I am not interrupted at all I could close in an hour.

The CHAIRMAN. I hope we can finish with you tomorrow. We will now recess until tomorrow morning at 10 o'clock.

(Whereupon at 12:05 p. m., the hearing is recessed until Tuesday, Mar. 26, 1935, at 10 a. m.)

(Report of Dr. Willford I. King presented by Mr. Curlee in connection with his testimony is here presented, in full, as follows:)

BEFORE THE NATIONAL INDUSTRIAL RECOVERY BOARD IN THE MATTER OF CERTAIN PROPOSED AMENDMENTS TO THE CODE OF FAIR COMPETITION FOR THE MEN'S CLOTHING INDUSTRY

(Statistical analysis by Dr. Willford I. King)

INTRODUCTION

At the recent hearing on certain proposed amendments to the Men's Clothing Code, the Clothing Code Authority presented a mass of what was called "representative data", designed to support its cause.

The statistics, carefully selected by the Clothing Code Authority to suit its purposes, are not "representative" and even if they were, do not remotely tend to prove their contentions.

The Clothing Code Authority has available periodical reports from each manufacturer in the industry showing, week by week, the number of employees, the man-hours, the wage payments, and the garments cut, for the full calendar year of 1934. With all of this material available, the code authority presented fragmentary statistics of selected manufacturers for selected fractions of the year. We have been unable on inquiry to learn their process of selection or why they considered these data "representative." We importuned them and the Administrator from the beginning to make available to us consolidated and classified figures including all manufacturers and covering the whole year. This was steadfastly refused us and has never been made available.

The Clothing Code Authority's whole case is predicated upon these carefully selected "representative" figures, and upon abundant evidence that the amendment is favored by Chicago, Rochester, New York, and Philadelphia. Nothing else whatsoever was adduced in support of their cause. If such a case were presented in any court and supported by such evidence, there would immediately be a directed verdict for want of proof.

Dr. King is professor of economics in the school of commerce, New York University, president of the American Statistical Association, and a member of the Advisory Committee on the Census. He is the author of the following works: Elements of Statistical Method, 1911; the Wealth and Income of the People of the United States, 1915; Employment Hours and Earnings in Prosperity and Depression, 1932; the National Income and Its Purchasing Power, 1930; Index Number Elucidated, 1930.

Dr. King is a personage who would not lend himself to a partisan advocacy. He was selected by us as the man best qualified, in our opinion, to make a judicial analysis of these statistics.

He is not responsible for this prefatory comment, but is responsible only for the contents of the following paper.

INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS.

ANALYSIS BY WILLFORD I. KING, PROFESSOR OF ECONOMICS IN THE SCHOOL OF COMMERCE OF NEW YORK UNIVERSITY, OF THE STATISTICAL EVIDENCE PRESENTED BY THE CODE AUTHORITY OF THE MEN'S CLOTHING INDUSTRY IN SUPPORT OF THE PROPOSED AMENDMENTS TO THE EXISTING CODE

On February 1, 1935, at the hearing before the Deputy Administrator, M. D. Vincent of the apparel section of the N. R. A. in Washington, D. C., the Men's Clothing Code Authority presented a large number of tables and charts which,

when taken in combination, are presumably intended to justify the proposed amendments to article II of the existing code. In certain of these tables the 10 leading centers of clothing manufacture, namely, Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Philadelphia, Rochester, St. Louis, and New York, are set apart for special study. From evidence extraneous to the tables and charts just mentioned it appears that the clothing manufacturers favoring the adoption of the amendments have their headquarters mainly in 8 of these 10 cities and are largely concentrated in the 4 cities, New York, Chicago, Philadelphia and Rochester. The manufacturers in 2 of the 10 cities, namely, St. Louis and Cincinnati, are generally opposed to the adoption of the proposed amendments, and in 2 of the cities, namely, Baltimore and Cleveland, there is much opposition to the proposed amendments.

The data presented by the Code Authority are apparently intended to establish the following points:

1. That the 10 cities just mentioned include within their borders the vast majority of all persons employed in the men's clothing industry, that those employed in the 10 cities produce the bulk of the men's clothing turned out in the United States, that wage rates paid in these 10 cities and earnings in these 10 cities are at levels much higher than those prevailing in the smaller cities, and that, therefore, the interests of the employers and workers in smaller centers are entitled to but minor consideration.
2. That the proposed amendments will affect the wages of but a small fraction of the employees engaged in the men's clothing industry.
3. That workers whose wages would be affected by the proposed amendments are, for the most part, employed by a "selfish few" concerns engaged in "exploiting" labor and in competing "unfairly" with enterprises operating on a legitimate basis.
4. That the workers employed in plants in which average hourly wages are low have relatively low annual earnings, and that they would be benefited by the proposed code amendments increasing minimum wage rates in the more skilled occupations.

The case which the Code Authority makes for the adoption of the proposed amendments appears to rest solely upon these four contentions. The question now to be considered is whether or not the evidence submitted proves these contentions to be correct. If not, there appears to be no reason for adopting the amendments. It behooves us, therefore, to examine carefully the evidence concerning each of the four points. These points will now be considered seriatim.

POINT 1

In a "Statement Submitted in Support of the Amendment to the Men's Clothing Code Proposed by the Management Members of the Code Authority" (for convenience, this document will hereafter be referred to merely as the Code Authority Statement of the C. A. Statement), dated January 29, 1935, the assertion is made on page 12 that 82.91 percent of all suits wholly or partly of wool produced in the United States were cut by manufacturers located in the nine principal cities—namely, New York, Chicago, Philadelphia, Rochester, Cincinnati, Cleveland, Boston, Baltimore, and St. Louis; that 86 percent of all labels were sold in these nine cities; and that approximately 70 percent of all man-hours worked by men's clothing workers in the United States were performed in 10 cities comprised of the 9 just listed and Buffalo.

On their face, these figures seem to justify the inference that but a small fraction of the total production of men's clothing takes place outside of the 9 or 10 leading centers of manufacture. Is this inference correct?

Before assuming that it is, let us, however, note the following points:

(*a*) The fact that 82.91 percent of suits are cut in these centers does not prove that 82.91 percent of the work on the suits is done in these same centers. It is, indeed, reported that a considerable proportion of all suits cut in the large cities are sent out to smaller towns for completion. Information on the extent to which this practice prevails has not been made available.

(*b*) The fact that 86 percent of all labels are sold in the nine largest centers does not prove that 86 percent of the manufacturing is done in these cities, for many concerns having factories in smaller cities maintain executive offices in the large cities, and hence buy labels there. The tables submitted fail to throw light on the extent of this practice.

(*c*) The fact that, in 1934, from July to November, inclusive, 69.17 percent of total man-hours worked were recorded as being performed in the 10 largest centers of manufacture seems to prove that neither the proportion of suits cut

nor the proportion of labels sold tells much about the proportion of manufacture taking place in the various localities. Apparently, plants operating outside of the 10 largest centers of manufacture furnish nearly three-tenths of the total volume of employment in the industry. Furthermore, by no means all of the men's clothing manufacturers in the 10 largest centers favor the proposed amendments to the code. In two of the cities, Cincinnati and St. Louis, opposition to the proposed amendments is, in fact, practically unanimous. It is only in the four cities, New York, Chicago, Philadelphia, and Rochester, that the sentiment of manufacturers of clothing is fairly well united in support of the code. According to table 37, but 48.65 percent of all man-hours worked were performed in those four cities. It appears, therefore, that those opposing the amendments do not represent merely an insignificant fraction of the industry, but constitute a goodly proportion of those engaged therein.

Now let us consider the contention that average wage rates are much higher in the 10 largest cities than in most of the smaller cities. Table 1 certainly indicates that average hourly earnings are higher in the 10 leading centers than they are in the smaller cities. In the men's clothing industry, however, rates are by the piece, not by the hour. Are piece rates for the same type of work higher in the large centers than elsewhere? The tables submitted give no evidence whatever concerning this point.

Since, in some of the large centers, many garments are cut and sent to the smaller towns for completion, the averages for the large cities contain an undue proportion of wages of cutters—the class of employees having the highest pay. To what extent the averages are affected by this fact, the figures in the tables presented do not show. It is, however, interesting to observe that, according to table 7, a considerable number of the 50 largest manufacturers of pants report "No inside pants shops." Apparently these manufacturers do cutting only.

Furthermore, the Code Authority has furnished no evidence concerning the comparative annual earning of workers in the large centers as compared to those in the smaller towns. These annual earnings cannot be computed without information as to how many weeks the average worker was employed during the year. Such figures have not been cited.

It is a well-known fact that living costs are lower in small towns than in large cities. The result is that the metropolitan worker may receive higher annual money earnings than the worker in the smaller city and yet not be able to live more comfortably. The data presented by the Code Authority throw no light on comparative living costs in different localities.

In general, then, she evidence furnished by the Code Authority does not prove either that producers in the smaller towns have a competitive advantage because of lower wage costs or that the workers in the large towns can live more comfortably or even have higher money earnings than the workers in the smaller places.

POINT 2

Since the data now available show nothing whatever about the respective numbers of persons employed in the various occupations in the men's clothing industry, and since no information is given concerning the present distribution of earnings applying to workers in each occupation, it is manifestly impossible to calculate the proportion of workers whose wages would be affected were the proposed amendments to the code adopted. We are, however, informed that, in 1934, the following percentages of all employees were receiving wages below 50 cents per hour:

Coat and vest shops

Fifty largest manufacturers, 54.7 percent (table 4).
Manufacturers employing 70 to 165 workers, 67.4 percent (table 5).
Fifty largest contractors, 70 percent (table 6).

Pants shops

Fifty largest manufacturers, 53.8 percent (table 7).
Manufacturers employing 70 to 165 workers, 89.2 percent (table 8).

It will be observed that the establishments having the fewer employees appear to have the larger proportion of workers receiving less than 50 cents an hour. We do not have reports for plants employing fewer than 70 workers. Such plants might show that the percentage of workers in the less-than-50-cent class was larger than in any of the reporting classes.

All in all, it seems probable that something like two-thirds of all employees are receiving less than 50 cents per hour and hence might be affected by the proposed amendment raising minimum rates for pressers, hand sewers, and all machine operators from 40 cents to 50 cents per hour. What fraction of these two-thirds are engaged in these operations is not reported. Table 21 indicates, however, that, under the amended codes, the 40-cent minimum would be applicable to about one-third of the employees in the coat and vest shops. Perhaps something like the same percentage applies in the pants shops. Since roughly two-thirds of all employees are now at the minimum, while, under the amended code, only one-third would be at the minimum, it appears probable that the proposed 50-cent rate for pressers, hand sewers, and machine operators would raise the pay of something like one-third of all workers by amounts up to 10 cents per hour, and the pay of an uncertain number of employees by amounts up to 25 cents per hour.

To estimate from the data at hand the proportion of employees who would have their pay increased by the establishment of the new 65-cent minimum provided for in the new codes is impracticable. Table 21 indicates, however, that it would necessarily be less than one-seventh of all workers. The increase would probably not apply to more than 6 or 8 percent of the workers, but the increase of this group might run to 25 cents per hour, or even more.

Although the evidence at hand is entirely too meager to make possible estimates having any close approach to precision, the figures certainly do not bear out the contention that the proposed amendment to the code would be inconsequential because it would apply to so few workers.

POINT 3

Since the tables and charts at hand do not identify classes of employees according to occupations, the data available do not enable one to determine what proportion of employers would be compelled by the proposed amendments to the code to pay higher wage rates to some of their employees. However, such evidence as there is gives a vague general impression that least of the employers in the industry would be affected more or less.

The conclusion that the employers who are paying the lower hourly wage rates are "exploiting" labor is based upon one of two assumptions.

(*a*) It may be assumed that all employees are equally efficient.

(*b*) It may be assumed that the average efficiency of all employees in any given factory is equal to the average efficiency of employees in any other factory.

Both of these assumptions are equally indefensible.

The truth is, of course, that employees following the same trade in the same factory differ widely in skill and productivity. Furthermore, some factories operate mainly with the more highly skilled employees in all occupations; others employ mostly less skilled employees. The existence of such broad differences in the class of persons hired is indicated by the data entered in tables 22 to 29, inclusive. These tables show wide differences in the hourly wages paid by various employers in the same city. It is unreasonable to suppose that such differences could be maintained in a highly competitive market were it not for the fact that the different employers operate with different grades of labor. One employer may be turning out low-grade garments and hence does not require the most highly skilled labor. He may pay less per piece than does the producer of higher-grade garments. However, the workers on low-grade goods may turn out many more pieces per hour.

On a given grade of work, less skilled labor turns out comparatively little work per hour, hence it is likely to cost as much per piece to operate with cheap, unskilled labor as with dear, highly skilled labor. Clearly, the amount paid per hour to an employee tells nothing about the rate paid per unit of work done. The probabilities are that the higher rates per hour paid in the larger cities indicate that workers in those cities turn out more pieces per hour than do the workers in the smaller cities.

To prove that the employer who pays low rates per hour is "exploiting" labor, it is certainly essential to show:

(*a*) That, for a given grade of work, he is paying materially less per piece than the rate per piece prevailing in the industry for similar work.

(*b*) That these lower piece rates enable him to secure abnormally large profit margins.

As a matter of fact, the tables and charts presented furnish not one iota of information concerning comparative piece rates. Neither do they give any inkling as to other costs, and these other costs, of course, differ materially in different localities and in different plants. Without information regarding these

two factors, it is obviously impossible to draw any conclusions as to whether or not certain firms are securing unduly large profit margins.

If employers in the factories having the lowest average hourly earnings pay the customary piece rates, they are certainly not competing "unfairly", nor do they have an advantage over their competitors. Neither does the existence of lower hourly earnings enable them to reduce costs and make unduly large profits. Not a shred of evidence has been found to support the assertion made on page 10 of the Code Authority Statement—namely "that establishments paying low wages have low total direct labor costs." The data presented throw no light upon the facts required to establish the conclusion just quoted.

POINT 4

Table 30 purports to prove that employment is as steady in establishments having high average rates per hour as in those where the average rates per hour are low. What it really shows is the average time worked per week by employees actually on the pay roll. Thus an employee might be recorded as working an average of 23 hours weekly who worked only 2 weeks in the year and who was idle 50 weeks. No information whatever is given about the number of weeks of employment obtained by the average employee. Without this information there is no possible way of estimating the average annual earnings of employees. It follows that the figures appearing in the last column of table 30, and entitled "Estimated Annual Earnings," are purely hypothetical and may be far from the truth.

The information furnished by the code authority tells us the distribution of earnings per hour. Workers, are, however, interested not in higher hourly earnings—they need higher annual earnings. The available figures throw no light on the question of where employees have the highest annual earnings.

The code authority, in advocating higher money wage rates in specific occupations assumes that the workers now receiving the lower wage rates will, after the adoption of the amendments, be paid at higher rates. This assumption is purely gratuitous. No evidence is presented to show what happened to the wage workers, who, before the code went into effect, were earning materially less than 40 cents per hour.

Certain individual employers state that, when the 40-cent minimum was adopted, they were compelled to dismiss all employees who, at the old piece rates, could not earn the minimum per hour called for by the code. Were these employers exceptional or typical? The tables and charts furnished by the code authority do not help us to answer this question. No figures are given to show for workers attached to the men's clothing industry the extent of unemployment developing after the adoption of the 40-cent minimum as compared to what existed before. Without these facts, there is no logical basis for assuming that those now earning less than the new minimums which it is proposed to establish will still be able to secure employment if the new minimums set by the proposed amendment are put into effect.

The general conclusion to be arrived at after analyzing the tables and charts presented by the code authority is that the data contained therein do not include any evidence justifying the adoption of the new scale of minimum wage rates set forth in the proposed amendment to article II of the Code of Fair Competition for Men's Clothing Industry.

WILLFORD I. KING.

FEBRUARY 15, 1935.

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

TUESDAY, MARCH 26, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Costigan, Clark, Gerry, and La Follette.

The CHAIRMAN. The committee will come to order.

Mr. Curlée will you please proceed where you left off?

STATEMENT OF FRANCIS M. CURLEE—Resumed

Mr. CURLEE. Mr. Chairman, I am perfectly willing to answer any questions that any member of the committee desires to ask, but now or at some other time I would like to——

The CHAIRMAN (interrupting). I would prefer that you proceed with your statement, because we must move along.

Mr. CURLEE. I would first like to have permission to put into the record the address from which I quoted on a preceding day of Joseph Schlossberg, entitled "The Rise of the Clothing Workers." I quoted from that on a preceding day. May that be introduced into the record?

The CHAIRMAN. Yes; it may be.

(The address will be found in appendix, after the close of the day's session.)

Mr. CURLEE. I would also like to offer the budget proposed by the Code Authority of the Men's Clothing Industry calling for $221,000 for 6 months, or at the rate of $442,000 per year.

Senator KING. Who is that submitted by?

Mr. CURLEE. This was submitted by Mr. M. D. Vincent, the deputy administrator.

The CHAIRMAN. That may go into the record.

(The budget referred to is as follows:)

NATIONAL RECOVERY ADMINISTRATION,
January 23, 1935.

[Registry No. 216/1/06—Approved Code No. 15—Notice of opportunity to be heard—Administrative Order No. 15-55]

MEN'S CLOTHING INDUSTRY (CODE AUTHORITY BUDGET AND BASIS OF CONTRIBUTION)

The Code Authority for the Men's Clothing Industry has made application to the National Industrial Recovery Board for approval of its budget for, and of

the basis of contribution by members of the industry, to the expense of administering the code for the period from January 1, 1935, to June 30, 1935.

The total amount of said budget for the said period is $221,000. The basis of contribution is as follows:

Labels sold at the rate of $3 per thousand to be used on the following garments: Rugby suits, sizes from 4 to 10; Eton suits, sizes from 4 to 10; reefers, sizes from 3 to 10; overcoats, sizes from 3 to 10; knickers, sizes from 6 to 16; boys' long pants suits, sizes from 10 to 16; topcoats and overcoats, sizes from 11 to 16; mackinaws, sizes from 6 to 16.

Labels sold at the rate of $5 per thousand to be used on all other garments coming under the Code of Fair Competition for the Men's Clothing Industry.

Said budget is as set forth on the reverse side hereof, marked "Schedule A", and hereby made a part hereof. Additional copies of said budget are available upon request at the office of the National Recovery Administration, room 3320, Department of Commerce Building, Washington, D. C.

Notice is hereby given that any criticisms of, objections to, or suggestions concerning said budget and said basis of contribution must be submitted to Deputy Administrator M. D. Vincent, room 4067, Department of Commerce Building, Washington, D. C., prior to Tuesday, February 12, 1935, and that the National Industrial Recovery Board may approve said budget and basis of contribution in their present form and/or in such form, substance, wording, and/or scope as they may be revised on the basis of criticisms, objections, or suggestions submitted and supporting facts received pursuant to this notice, or other considerations properly before the National Industrial Recovery Board.

Any person submitting any such criticism, objection, or suggestion must state his name, the persons or groups whom he represents, and the facts supporting his objection, criticism, or suggestion. All matter submitted will be given due consideration and the National Industrial Recovery Board will act after consulting with such of its advisers as it may deem appropriate.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer.*

M. D. VINCENT,
Deputy Administrator.

(N. B.—To code authorities and trade and industrial associations and agencies: The above contains notice of possible action in which your members or other parties known to you may be vitally interested. You are urged to exercise every reasonable effort to cause the subject matter to be called to their attention.)

SCHEDULE A.—*Men's clothing industry budget*

EXPENDITURES

Salaries:	
Chief executive officer	$12,500
Other executives	6,600
Legal counsel	5,000
Clerical employees	55,248
Other employees-investigators	42,264
Total, salaries	122,612
Office expenses:	
Rent, light, and water	8,175
Telephone and telegraph	2,400
Stationery, supplies, and printing	2,400
Postage	2,100
Expressage	4,200
Total, office expense	19,275
General expense:	
Traveling expenses:	
Members of code authority	4,500
Employees	17,400
Legal fees	1,800
Accountants' fees	540
Insurance	480

SCHEDULE A.—*Men's clothing industry budget*—Continued

EXPENDITURES—continued

General expense—Continued.	
Codes Label Council:	
Consumer and retail enforcement	$3,600
Bureau of Census and Labor Statistics	3,000
Total, general expense	31,320
Contingencies	6,793
Actual cost of N. R. A. labels	41,000
Gross budget	221,000

Senator KING. What business has the deputy administrator to submit the budget? I am asking for information.

Mr. CURLEE. The introduction to this is "Men's Clothing Industry Code Authority budget and basis of contribution." And it states:

"The code authority for the men's clothing industry has made application to the National Industrial Recovery Board for approval of its budget" et cetera. I am in error on that. It states "Notice is hereby given" and the notice is signed by Mr. Vincent.

The CHAIRMAN. It is in the record.

Mr. CURLEE. This appears to have been submitted by the code authority.

Senator KING. Who prepared that budget, if you know?

Mr. CURLEE. I do not know.

Senator KING. Who is the head of what might be called the "code authority"?

Mr. CURLEE. Mark W. Cresap of Chicago is the president or chairman of the code authority.

Senator KING. What is his salary?

Mr. CURLEE. He draws no salary. The executive director was until recently Mr. George W. Bell. His salary is stated at $25,000 per year.

Senator KING. Is that out of the budget?

Mr. CURLEE. That is one item in the budget; yes.

Senator KING. Who fixes his salary?

Mr. CURLEE. I presume it is fixed by the code authority. Mr. Bell, though, has recently resigned, and Mr. Morris Greenberg has succeeded him within the last few weeks. I do not know what Mr. Greenberg's salary is.

Senator KING. How many salaried officials are there? The budget would show, would it not?

Mr. CURLEE. This budget is not broken down. It is divided into "Chief executive officer", "Other executives", "Legal counsel", "Clerical employees", "Other employees—Investigators." The total salaries for those are $122,612 for 6 months or $245,000. That is per year. Then there are office expense, broken down into "Rent and light and water", "Telephone and telegraph", "Stationery, supplies, and printing", "Postage", and "Expressage", which aggregates $19,275.

Then there is the general expense——

Senator KING (interrupting). It is in the budget, is it not?

Mr. CURLEE. Yes.

Senator KING. You need not pursue it further.

The CHAIRMAN. That has gone into the record.

Mr. CURLEE. The evidence already in shows that members of the industry are required to furnish periodical data. I would like to introduce into the record a form of production report that is provided by the clothing code authority for the members to report on.

The CHAIRMAN. Very well.

(The same will be found, in appendix, after the close of the day's session.)

Mr. CURLEE. I would like also to offer the forms for pay-roll reports.

Senator KING. What is the pertinency of that, Mr. Curlee?

Mr. CURLEE. There has been evidence, Senator, that members of the industry are required to make periodical reports of production, wages, number of employees, man-hours, and so forth, and I wanted to show the scope of those reports. These pay-roll reports are in three sheets.

The CHAIRMAN. Very well.

(The same will be found, in appendix, after the close of the day's session.)

Mr. CURLEE. I would also like to offer the accompanying form letter sent out with those blanks.

The CHAIRMAN. Very well.

(The same will be found, in appendix, after the close of the day's session.)

Mr. CURLEE. And also the frank envelop provided for the return of the reports.

The CHAIRMAN. Very well.

(The same will be found, in appendix, after the close of the day's session.)

Senator KING. Where does the envelop indicate that the report must be returned to?

Mr. CURLEE. This envelop is addressed to the Commissioner of Labor Statistics, Department of Labor, Washington, D. C. This form letter tells the whole story about that.

The CHAIRMAN. Just put it in the record, Mr. Curlee

Mr. CURLEE. The form letter states:

These reports, after being tabulated in Washington, will be forwarded by the Bureau of Labor Statistics to the Men's Clothing Code Authority.

I would also like, if I may, to introduce into the record the statement of the Industrial Recovery Association of Clothing Manufacturers, which was filed in the recent hearings on proposed amendments to the clothing code which began on February 1.

The CHAIRMAN. Each member of the committee has one of those, and that is a pretty voluminous volume, and is costly to print. I would like to submit that to the committee later on as to whether or not that should be reincorporated into the record. I have some doubts as to whether it should be, inasmuch as each member of the committee having one of those, it is available to them without trouble and need not be reprinted.

Senator KING. Did you mean the whole record or just part of it?

Mr. CURLEE. I meant the whole record. I am not particular about the form. I just wanted it to be before you.

The CHAIRMAN. Each member of the committee has one.

Mr. CURLEE. It contains a great deal of matter to which reference has been made from time to time.

I would also like to introduce into the record, if I may, an editorial from the New York Sun of March 13, 1935, commenting on the reports that have been submitted here, prepared by Mr. Henderson, with particular reference to the statistics on interest and dividend payments.

The CHAIRMAN. It will be received. Proceed, please.

(The article above referred to appears in full, in appendix, after the close of today's proceedings.)

Mr. CURLEE. I should like to offer release number 10560, dated March 18, 1935, being an explanation by Mr. Leon Henderson of those statistics.

The CHAIRMAN. Very well.

(The article above referred to also appears in full, in appendix, after the close of today's proceedings.)

The CHAIRMAN. I would like to say that without objection the action of the subcommittee in the report and the recommendation of the three or more experts will be agreed to, to help the committee in expediting the work.

In that connection, may I say that the experts have gone through the files submitted by Mr. Curlee and they report that there are only two of those communications that might in any way be interpreted as attempting to influence Members of Congress and that they may be questioned. Those two are here. I just wanted to call attention to that.

You may proceed, Mr. Curlee.

Mr. CURLEE. I have related something before about the debates that occurred in Washington during the formative days of the code hearings over the divided code authority. The term "code authority" had not then been invented, but it was known then as the "administrative and advisory agency", and by various other terms, but for brevity and directness, we will call it "code authority".

The declaration was definitely and clearly made by the U. S. A. Association through its counsel that they would not consent to any divided authority. It was stated definitely and clearly that if the members of the Industrial Recovery Association were admitted to the code authority, that the others would not serve.

In June 1934, after the code had been in vogue for many months, Mr. David Drechsler, the counsel for the Clothing Code Authority, wrote a series of articles which were published in the Daily News Record, giving a historical review of the formation of the code and its operations. I want to read an excerpt or two from that.

From the issue of June 22, 1934, of the Daily News Record appears this [reading]:

A review of the achievements of our association is in order now for the purpose of demonstrating clearly the past inherent vigor which our officers deem still available for future constructive effort.

Being aware of the shape that things were assuming in April of 1933, several of our larger manufacturing firms in the Chicago, New York, Philadelphia, and Rochester markets arranged for a meeting to be held in Washington, on May 22, for the purpose of creating a national association which was to facilitate the entry of the clothing industry into the plans for rehabilitation known to be in the offing.

At the meeting which resulted, the Clothing Manufacturers Association of the U. S. A. was organized, officers were elected and a board of directors created as

a governing body. For purposes of facility and convenience an executive committee was appointed from the membership of the board of directors, with full power to act for and to bind the association.

Further in the same article:

Detailed description of the various points of contention are significant in this report because of the light thereby cast on the industrial character of the Northern group, our own, whose interests are thus shown to be precisely those required for the new type of economic order outlined above.

In addition to the common and perfectly normal desire for a fair profit, the sense of obligation toward labor and the public welfare are definitely manifested. Moreover, the virility with which the espoused cause of the Northern group was pursued does, as was indicated before, bodes well for what can be done by us in the future.

Mr. CURLEE. I call attention to the fact of those references to the Northern group and "our own" as being "our own group" made by Mr. Drechsler, who is now the chief counsel for the Men's Clothing Code Authority.

Under date of June 25, 1934, in the Daily News Record, appears this, also by Mr. Drechsler:

The last great point of dispute arose over the question of representation and make-up of the proposed code authority. The Southern group asked for 5 members representing their group, 5 ours, and labor, consumer, and administration representation. Our group, for tactical reasons, contended that the Southern association was entitled to no representation at all, the theory being that an administrative body, and the authority was that, could not execute effectively any policies to which it did not have unanimous adherence. Lord Bryce and Woodrow Wilson were the authorities for the contention.

Suffice it that the compromise which resulted was decided in favor of the Northern (our) association. The Southern group was given representation, but such representatives consisted of 5 members as against the Northern 10; and, moreover, the 5 were to be chosen by the president of the association and were not actually required to be members of the Industrial Recovery Association. It was sufficient only that these 5 were not members of our association. The 15 were permitted to select 2 more members. Labor was given 5 members and the administration 1.

Mr. CURLEE. I would like to offer the whole of both those articles into the record.

The CHAIRMAN. Very well.

(The two newspaper articles appear in full, in appendix, after the close of today's proceedings.)

Mr. CURLEE. Something has been said about the invitation extended to all of the industry to join the U. S. A. Association after it was first organized. Bear in mind that they had already elected 18 of the 21 members of the board of directors.

There was a requirement that each member sign an operating agreement which is copied in full on page 104 of the statement of the Industrial Recovery Association Clothing Manufacturers which, for brevity, I will call the "Green Book." This operating agreement which he must sign is in this language:

The association, in the absolute discretion of the board of directors, may prepare standard terms or agreements to be utilized and put into practice by every member, to cover maximum hours of work for each day and the number of workdays each week, and the minimum rate of pay, and such other working conditions as may be desirable to obtain the benefits of the Industrial Recovery Act for the clothing industry.

The members agree to accept and execute such agreements, as individual contracts; or, in the discretion of the association, to be bound by a general agreement of the association, and such agreements shall be binding upon all its members as effectively as if each had executed the collective agreement for himself.

The member authorizes the association in the absolute discretion of its board of directors to prepare standard codes of practice which shall have the approval of the President of the United States or his properly designated representative or subordinate, to be put into practice by every member of the association, and to be a standard for every member of the industry, and designed for the protection of the consumers, competitors, employees, and others in furtherance of the public interest.

The association, in the absolute discretion of the board of directors, may set up a bureau of adjustment to settle all matters involving codes of ethics and proper trade practices; and in addition to the provisions for enforcement set forth in the National Industrial Recovery Act, the bureau shall work out methods for controlling such codes and practices and may establish appropriate rules in reference thereto.

Senator KING. Was that signed by all of the members?

Mr. CURLEE. That was signed by all of the members of the U. S. A. Association.

Senator KING. Did the directors prepare a standard form or agreement?

Mr. CURLEE. I do not know that they ever did, Senator. They did prepare a code. Whether they prepared those standardized agreements, I do not know.

Much has been said elsewhere about the effort of the U. S. A. Association to effect a merger of the two associations. They did suggest a merger of the two associations. We established headquarters in New York, they did, too, and we offered in the public press to collaborate with them in preparing a code. Those offers were declined and they insisted on a merger of the two associations. Upon inquiring as to the terms of the merger, we got oral answers which were highly unsatisfactory.

Senator KING. From whom?

Mr. CURLEE. From the U. S. A. Association as to what proportion of the control they would have as to this operating agreement, the necessity for the operating agreement, and other things, but the conversations continued and there was considerable talk about their invitation to us to join their association or to merge the two associations and our refusal to do it.

We were willing to merge the two associations if our interests could be properly safeguarded. I mention that here and now because it will probably come up in the course of these hearings, and I believe the committee should be acquainted with that issue and how it was disposed of.

Senator KING. Why did Lindsay Rogers not accept your code instead of the other, or why did he accept the code which was tendered by the others rather than yours?

Mr. CURLEE. The issues between us, Senator, were all reconcilable, except two, and those were the issues on which we split. Those two really amounted to one issue. They insisted upon this vague and nebulous article 2 (b), admitting that it was not susceptible of definite interpretation or of uniform application, but insisting that an ameliorating method would be found in the discretionary powers committed to a committee. We objected to undefined powers vested in a committee that was bound by no rules, and that was the issue on which we finally split. Dr. Rogers agreed with their group on that and disagreed with us. That is the issue over the code.

As to the merger of the two associations, the members of our association declined to sign a blank check to the association in the form of this operating agreement.

But, coming back to the merger——

Senator KING (interrupting). Was that operating agreement part of the code?

Mr. CURLEE. It was a part of their association but not of the code.

We finally wanted to focus the issues of the merger of the two associations and made a definite proposal which is copied on page 105 of the Green Book. That proposal was in this form [reading:]

The code will be the organic law of the clothing industry and is, in our opinion, the important thing. The form of organization of the trade association or associations of the industry is a matter of secondary importance. Emphasis, however, has been placed upon the latter consideration, and with a desire to bring the discordant elements of the clothing industry into harmony, the executive committee of the Industrial Recovery Association of Clothing Manufacturers proposes a merger of the two associations, to be effected in substantially the following manner:

1. A new trade association shall be organized under a new corporate structure. All members of the Clothing Manufacturers Association of the United States of America (herein called "group 1") and all members of the Industrial Recovery Association of Clothing Manufacturers (herein called "group 2") shall be eligible to membership in and shall be invited to join the new association.

2. The board of directors and all important committees and agencies shall be divided between group 1 and group 2, as nearly as may be in proportion to the aggregate number of persons employed by group 1 and group 2, respectively. In the beginning, the basis shall be the aggregate number of persons actually employed on July 1, 1933.

3. Dues and assessments shall be apportioned among the members on the basis of persons actually employed or of volume of business, or on some other such equitable basis. They shall be such as are reasonably necessary and proper to carry into effect the purposes of the organization, and without the accumulation of any unnecessary surplus.

4. Any member of the associaton may resign from the association at any time, without any obligation other than the payment of unpaid dues and assessments. This, of course, does not imply that the resignation of a member from the association in anywise affects his obligations imposed by law or by the code. Such obligations do not rest upon membership in any association.

5. The association shall not have authority to make any rules concerning wages, hours, working conditions, labor relations, competitive practices, or any other substantive matters which are legislative in character. Such are matters to be determined by the provisions of the code. This does not affect the right of the association to advise and urge amendments to and modifications of the code concerning such matters.

6. The association shall have no direct disciplinary power over its members except the power to expel. This does not abate or impair the right or obligation of the association to police the industry, to secure evidence, and to invoke all lawful remedies against offenders.

7. The association will have in its membership institutions operating under agreements with the Amalgamated Clothing Workers of America, others operating under agreements with the United Garment Workers of America, and others operating open shops. As among these different methods of operation with respect to labor relations the policy of the association shall be one of strict neutrality and the bylaws shall so provide.

This proposal presupposes that the two groups will be able to agree upon a code which they shall unite in presenting for approval. The minimum wages and maximum hours defined in the code shall be such as may be determined by the Administrator. There has been no issue between the two associations on these subjects. We confidently believe that an agreement can be reached on all other points.

If this proposal is approved, we suggest the following procedure in the interest of expedition [reading:]

The code, the new articles of incorporation, and the bylaws shall be drafted without delay. The code shall be presented by the two associations, and, if and when approved by the Administrator, shall become effective at the earliest practicable

date. The actual merger of the two associations can be accomplished during the coming week.

That proposal was not accepted.

Then we proceeded to negotiate to reach an agreement if possible on the provisions of the code, and, as I stated to you, Senator King, the rock on which they split was those two provisions having vague wage provisions in the higher brackets and delegating limitless powers to a committee.

This was the proposal we made for the adjustment of wages in the higher brackets——

Senator KING (interrupting). Where are you reading from?

Mr. CURLEE. From the full text of a proposal made by the Industrial Recovery Association. On page 107 of the Green Book is the full text of the proposal made by the Industrial Recovery Association of Clothing Manufacturers to reconcile differences in the proposed codes. There are a number of paragraphs there, none of which are highly important except the wage rates in the higher brackets and the wide powers delegated.

The proposal of our association was this [reading:]

All piecework rates and the weekly or monthly wage scales of all employees to which this article is applicable, shall be so revised as to effect a minimum increase of 20 percent in the earnings effective under the rates prevailing July 1, 1933, without diminution because of reduced working hours. This mandatory increase shall affect only those classes of employees earning, on July 1, 1933, an average of $30 a week or less for full-time employment. The minimum wage shall be not less than 35 cents per hour in the North and 32½ cents per hour in the South.

1. The minimum wage at that time was that proposed in each of the codes, and the note says:

(NOTE.—It is understood that the minimum wage rates prescribed in the last preceding sentence shall be such as shall be determined by the Administrator.) There shall be no other wage rates prescribed in the code.

Those were the issues on which we divided, and Dr. Lindsay Rogers thereupon approved the code proposed by the U. S. A. Association, with certain modifications.

Senator LA FOLLETTE. Were there any material modifications?

Mr. CURLEE. I cannot tell from memory just what they were or just how material they were. In substance, it was the same code.

Yes; there were some modifications, Senator, that might be material. For example, in the proposed code of the U. S. A. Association, it was proposed that all members of the U. S. A. Association should be regarded as automatically licensed, and that all persons not members of the U. S. A. Association should be licensed.

Senator KING. By whom?

Mr. CURLEE. I have forgotten whether it was by the code authority or by the association.

Senator KING. Did it provide that if they were not so licensed, they would be boycotted or outlawed or could not function?

Mr. CURLEE. I do not believe that was expressed, but that certainly would have been the effect, as subsequent events showed, and was intended then.

In lieu of that, was inserted the label provision which we now have requiring the use of a label in every garmet. That change was perhaps material; if not in effect, it was in form.

And there were some other modifications effected. Just what they were, I do not remember, but in its general scope it was the code, proposed by the U. S. A. Association.

They then proceeded to organize the code authority and begin functioning. They began to publish rules and interpretations. I will touch upon that in a few moments; but also they assumed the power or exercised the power to grant exemptions from the code to individuals who might persuade them that they were entitled to it.

For example, one large manufacturer—one of the largest—is the Goodall Co., whose president is Mr. Elmer L. Ward, and who is a member of the code authority.

Senator LA FOLLETTE. Where is the company located?

Mr. CURLEE. The company is located, I believe its headquarters are in New York City. I am not sure about that, but it operates plants in Sanford, Maine; Knoxville, Tenn.; Lorain, Ohio; and Cincinnati, Ohio. I believe Mr. Ward is a resident of New York; I am not sure about that; it may be Sanford, Maine. But the headquarters of the company is—I do not know—but they have offices in New York and I presume in each of the places of production.

Mr. Ward was, from the beginning, a member of the code authority, and made an application for an exemption from the code as to hours, for leave to operate 40 hours in his plant, and the deputy administrator had a hearing on it—I presume, we never learned of it until long afterward—and granted the exemption as to the Knoxville plant and denied the exemption as to the Lorain, Ohio, plant. I do not know that any exemption was asked for at that time for Cincinnati and Sanford. I know it was asked for Knoxville and Lorain. It was granted as to Knoxville, and he continued to operate 40 hours in Knoxville. It was denied as to the Lorain, Ohio, plant, but by some understanding which I do not know about and have not been able to find out about, he did continue to operate 40 hours per week at Lorain, Ohio.

That was the first example that came to us of exemptions from the law. We learned about that long afterward. We did not know it was a standardized, regular practice.

Later on there was an exemption or application for exemption from another code provision by McCransky, of Philadelphia. McCransky is, or was, a member of the code authority. I think he is off the code authority now, but he was formerly a member of the code authority.

Senator LA FOLLETTE. Was he a member at the time this application for exemption was made, do you know?

Mr. CURLEE. I think so, Senator, but I could not be positive just when he resigned.

The code contains an absolute prohibition of sales on consignment. Selling on consignment means this: That the manufacturer ships the goods to the merchant, retains title to it in himself, and takes all of the hazards of merchandising, obsolescence, and other risks, and the consignee remits to him if, as, and when he sells the merchandise. It is a very advantageous arrangement for the consignee and was deemed to be a method of unfair competition that was prohibited in the code.

Senator LA FOLLETTE. Was it rather prevalent in the industry prior to the code, do you know?

Mr. CURLEE. I would not say it was prevalent. It existed to some extent. There were a great many houses that did not practice it at all. Some practiced it to a considerable extent and others practiced it casually from time to time. There was no standardized practice in it. It depended on the disposition of each manufacturer and his merchandising methods.

McCransky applied for an exemption from the consignment provisions and procured an order exempting him for a limited time from the prohibition on consignments.

There were several other exemptions on various and sundry subjects granted.

The McCransky exemption granted him the privilege of selling 133 merchants who were named in a list filed by him. The names of those merchants have been withheld. We have never been able to secure a list.

Senator KING. You mean to sell to them on consignment?

Mr. CURLEE. To sell to those 133 merchants on consigment. We have endeavored to procure a list of those but without success.

Senator KING. Did you favor that provision of the code?

Mr. CURLEE. Do I favor it?

Senator KING. Your group.

Mr. CURLEE. There was no opposition to it. Yes, sir; they favored it. Personally, since I have been asked to distinguish several times—personally, I do not favor any such restrictions as that. My own belief is that a merchant or a manufacturer has a right or should have a right to sell his goods on any terms he sees fit, or give them away if he sees fit.

Senator GEORGE. Was the consignment sale outlawed by the code or was the consignee classified as an agent with a specified minimum wage?

Mr. CURLEE. The consignment sale was outlawed by the code.

Senator GEORGE. In some other lines they have not outlawed them but undertook to make the contract agent a salesman or full time agent although they were not in fact full time.

Mr. CURLEE. No; it is unconditionally outlawed. This unconditionally outlaws the practice.

Here is an example of one of those exempting orders which I may introduce into the record, if the committee approves. It reads as follows:

SEPTEMBER 24, 1934.

MEN'S CLOTHING

ORDER CODE OF FAIR COMPETITION FOR THE MEN'S CLOTHING INDUSTRY—NO. 15-34

Granting application of Hickey Freeman Co., New York, and Cohen, Goldman & Co., N. Y., for an exemption from the provisions of article XII, section (a) of the Code of Fair Competition for the Men's Clothing Industry.

Whereas an application has been made by the above-named applicants for an exemption from the provisions of article XII, section (a) of the Code of Fair Competition for the Men's Clothing Industry.

"Whereas the Deputy Administrator has reported and it appears to my satisfaction, that the exemption hereinafter granted is necessary and will tend to effectuate the policies of title I of the National Industrial Recovery Act:

Now, therefore, pursuant to authority vested in me, it is hereby ordered that the above-named applicants be and they hereby are exempted from said provisions of said code to the extent that they be permitted to ship goods on consign-

ment to the firm of W. B. Davis Co., of Cleveland, Ohio, for a period not to exceed 6 months from the date hereof, provided that at the termination of said period of 6 months, they may petition for an extension of this exemption for a further period of 6 months.

This order is subject to revocation by me at any time.

SOL A. ROSENBLATT,
Division Administrator.

Order recommended:

DEAN G. EDWARDS,
Deputy Administrator.

AUGUST 28, 1934.

That is one that is very limited in its scope. The McClanskey exemption, as I stated, included 133 retailers to whom he might sell.

Senator LA FOLLETTE. Was there any limitation on that exemption?

Mr. CURLEE. It was limited in time; yes sir, Senator.

Senator LA FOLLETTE. To 6 months, or do you know the period?

Mr. CURLEE. There were several of those. I think they were renewed from time to time, and as in this one, it grants leave to apply for an extension. I have several of those, and I could seek them and put them in the record. They are available.

Senator KING. Is that signed by Mr. Sol. Rosenblatt?

Mr. CURLEE. Yes, sir; Sol A. Rosenblatt, division administrator.

Senator KING. I thought that he had charge of the moving-picture code?

Mr. CURLEE. This was August 28, 1934, and he has since been relieved of his responsibilities in this and given some other responsibilities. I believe it is the movies, but at that time he was division administrator for this section.

Senator KING. What is the difference between a division administrator and the code authority administrator of a code? Does one have jurisdiction over the whole United States and the other over just a limited part?

Mr. CURLEE. Senator, I never have been able to find out just what the set-up is. It does change frequently, and it is almost impossible to keep up with it. As I understand, all of industry is divided into major divisions, and there is a division administrator over each division, and then there is allocated certain groups of industries, and there are deputy administrators and assistant deputy administrators and acting assistant deputy administrators, but I have never been able to keep up with it.

Senator KING. It is something like the governmental bureaus.

Mr. CURLEE. Suffice to say, these are all for a limited time, and that some of them have been extended or renewed by additional orders. Does that answer your question?

Senator LA FOLLETTE. Yes.

Mr. CURLEE. Our comment on the exemption is this: We have complained about the exercise of the power to grant exemptions from the law. We have been told in each case that the equities of the situation required it, and there has been a justification in the particular case or an attempted justification in each particular case, but the vice and the weakness of that system, as we see it, and I want to voice our opposition to any system which gives to any bureau or individuals the power to make, break, or extend the law at will, and they exercise this power.

We have heard some comment generally throughout the hearings to the effect that code authorities are limited in their powers and cannot do any wrong to the subject elements of the industry by minority interests, because the administrator always stands there to see that justice is done. We have had involved with the N. R. A. many times statisticians and economists, but it does not take any psychologist to know the effect of that system so far as the subject elements of an industry are concerned.

They are believers in the N. R. A., there is an N. R. A. team, and I think it is absolutely inevitable that people are going to play with their own team. Every undergraduate in a school is for his football team, whether he is a member of it or not. There is an N. R. A. team here, which is absolutely inevitable, and the code authority and the administrators work in close harmony on it. It is unavoidable and inevitable. Anyone who is a critic of the N. R. A. is an outsider and is against the team.

The Romans had one word for "stranger" and "enemy", and I think every person who is not playing ball on the N. R. A. team is a stranger and an enemy. That has been the effect of it as I have observed it, and I believe it is the effect throughout all industries as I hear it from other people.

But the decision must be made as to whether we are going to have a uniform law or whether we are going to have laws which may be suspended; whether we will have a government of laws or a government of men, and to my mind it does not justify these practices to show that in a particular case the law bears so harshly or onerously on an individual that he is entitled to exemption from it. It is absolutely inevitable that the law will bear harshly and onerously on other people who have not the power nor the influence to persuade the proper authorities that the law bears onerously on them.

That decision is not for me to make, but I merely point that out as what I consider one of the major vices of this whole system.

Senator COSTIGAN. How would you avoid that consequence, assuming that the law is continued. What constructive suggestion have you for the amendment of the statute?

Mr. CURLEE. In the first place, Senator, I suppose it is no secret to you that I do not think the law ought to be continued. In the second place, if it is continued, I have no constructive suggestions to make. I believe that codes ought to be prepared which as nearly as may be possible will be applicabe to the industry and require industry to live under it.

Senator COSTIGAN. You think that a minimum of discretion should be authorized, if any discretion is authorized?

Mr. CURLEE. I do not think there ought to be any discretion to suspend a law. I believe that the N. R. A. has entertained such high aspirations for the control and regimenting of business that the control has been found inapplicable in many cases, and these exemptions from the law have resulted.

If we are to have it at all, I believe it ought to be a law uniform in its application, it ought to be understandable and that industry should not be required to guess at its peril or to exist on condition of being able to persuade the right people of the justice of their cause. I think, Senator, that is a vicious system. I believe the vice will grow if the N. R. A. is continued with that vice inherent in it.

Senator COSTIGAN. Are you in favor of the antitrust laws without exception or discretion?

Mr. CURLEE. I am in favor of the antitrust laws as construed by the Supreme Court of the United States; yes, sir.

Senator COSTIGAN. The interpretation of the statute which permits reasonable combinations would appear to permit a certain measure of discretion, would it not?

Mr. CURLEE. That, Senator, I regard as a question of interpretation of the act and not of a suspension of the act in particular places. I distinguish between those two. These codes must be interpreted by some tribunal if some alleged offender comes in collision with them, but interpretation I believe is a very different thing from suspension.

Senator LA FOLLETTE. If I understood you, Mr. Curlee, you said that you were opposed to the extension. Is that true of all of the other members of your association?

Mr. CURLEE. I believe it is true of all of them with the possible exception of a very small number. I believe that a very small number might be in favor of it.

Senator LA FOLLETTE. Have you made any effort to ascertain what the attitude of the members of your association was toward the question of extension of the N. R. A.?

Mr. CURLEE. I have done it in this way. These proposed codes came up and I want to answer your question, but I would like to digress as briefly as possible there and come back to that later if I may; but in answer to your question as to the sentiment of our members, I feel thoroughly confident of that. There were certain amendments proposed that I have spoken of and we had hearings on February 5. There was some correspondence among the members of the association, and some letters were sent out to get expressions of sentiment, but no definite poll was taken, and the executive committee, and the board of directors, and the officers of the association, on the strength of that informal test of sentiment, proceeded to resist them.

At the hearings, the direct challenge was made to me that I had no authority to speak for my association. I sent out a telegraphic request for a poll of the proposed amendments without indicating which way they should vote at all; to vote in favor of or against them. We got two replies in favor of the proposed amendments, and all the rest of them were against the proposed amendments. That showed the attitude of the association on that. So far as these proposed amendments are concerned, I have lived with this situation long enough to know just as well as I knew then what the attitude of the association was toward the N. R. A. As a matter of fact, they have been so harassed and bedeviled with it, that there is scarcely a member of it that would not be delighted to get rid of it all. I do not have any doubt about the sentiment of the association on it, Senator.

Senator COSTIGAN. You say, "scarcely a member," and you referred to the minority favorable to the extension. Can you specify the members of the association in favor of such an extension?

Mr. CURLEE. I can identify one who has not positively but rather expressed himself favorable to the extension of it. I talked to him over the telephone, Mr. Walter Meyers of the Michael Stern Co. That is the only one, I believe, that I could identify as being favorable to it.

Senator COSTIGAN. There has been no formal expression on the question by all of the members?

Mr. CURLEE. There has been no formal expression, but many informal expressions, and the sentiment of the association is practically unanimous against it. I believe Mr. Meyers would be the only exception I could name.

Senator COSTIGAN. How large a business does he conduct?

Mr. CURLEE. I would have to get that. If I would guess, I would say from 500 to a 1,000 people.

Senator COSTIGAN. Employees?

Mr. CURLEE. Employees; yes.

Senator COSTIGAN. Where is his business located?

Mr. CURLEE. It is located in Rochester. It is an old and highly reputable business, and is run by two brothers, who are of the highest type of men.

Senator LA FOLLETTE. Is M. Weill & Co. a member of your association?

Mr. CURLEE. No, sir.

Senator LA FOLLETTE. Is Joseph Van Veet a member of your association?

Mr. CURLEE. No, sir.

Senator LA FOLLETTE. Is Leopold Morris connected with any concern that is a member of your association?

Mr. CURLEE. Leopold Morris is a member of the association.

Senator LA FOLLETTE. Do you know what his attitude is?

Mr. CURLEE. Yes; I do. As I told you, I got two responses to the telegraphic poll in favor of the proposed amendments. Leopold Morris was one of those. I have not talked to him about the N. R. A.

Senator LA FOLLETTE. Would you be willing—because I think it would be of interest to this committee—would you be willing to poll the members of your association as to their attitude toward continuance of the N. R. A. and submit it for the benefit of the committee?

Mr. CURLEE. I will be very glad to do it; yes, I will be very glad to do it, Senator. I have no doubt what the result of the poll will be, but I will be very glad to make it exact.

The CHAIRMAN. Of course, if you are going to poll your organization, they ought to be told what the President's suggestion is, which they probably know, and also the suggestions of Mr. Richberg and the chairman of the N. R. A., because they might take the viewpoint that they are opposed to it as it is run now, about which you have complained, and they might modify their veiwpoints if there is going to be a simplification of it. I do not know that you could give them all of the details as to the proposed simplification. I do not know whether any member of the committee could do it.

Mr. CURLEE. Senator, I believe that would be impossible for me. If an expression of sentiment of our membership is desired, I will be glad to get it, but I believe it would so complicate and befuddle things as to make it impossible to get a clear expression of intent.

For myself, I have admitted that I am against the N. R. A., but it might be tolerable even to me. I do not mean welcome, because I do not believe in it in principle; I think it is wrong in principle and wrong in practice; but if it were limited to a simple proposition of hours and wages, hours and a minimum wage which is understandable and all of the bureaucracy were eliminated from it, and the latitude

and the power to make interpretations, and the simple provisions imposed by law, which the subjects of the law could understand and interpret and not guess at at their peril, it would be tolerable to me.

The CHAIRMAN. Let us try to get the reaction of the members of your organization and give it to the clerk.

Senator COSTIGAN. Colonel Curlee, as suggested by the chairman and your own response, is it true as some of us have inferred, that your objections are largely objections to the administration of the law?

Mr. CURLEE. They are largely, Senator, but I do not want to be misunderstood. I do not believe in this system of regimenting business, but the objections I am making here go chiefly to the method by which it has been administered. I think it has been intolerable and will be intolerable, and it is my firm conviction that if this contines, there will not be a clothing manufacturer left in the South or the West. It is certain that not another one will be opened up. No institution would dare start in the clothing business now as it is set up.

One tried it. I will mention him by the name of the institution if you want to. Down in Shelbyville, Ky., in the spring or the early summer of 1933, the citizens of the community got together and said, "We want to start an industry down here, something to take people from the relief rolls." There has been the curtailment of crop production—it is in the Tobacco Belt—and a great many people were unemployed. This was in Shelbyville, Ky. They said, "We want an industry, any industry to take people off the relief rolls and put them to work." They raised some capital—about $37,000, I think it was in preferred stock and sold it around among the citizens who subscribed mostly from civic motives to take people off the relief rolls and put them to work.

They finally got in contact with a man who had been in the clothing business and had had some experience in the manufacture of clothing in the sales end of it. He made arrangements with a practical manufacturer, and they agreed to start up this clothing institution in Shelbyville, Ky. It was a condition for the subscriptions to the stock that excepting for supervision and for a few key workers who might train them, all of the employees would be local employees—would be home people. That was the motive in starting the factory.

This institution was incorporated in the fall of the year and began operations January 1, 1934. In the meantime the code had come into effect. They started their plant, mind you, long before the N. R. A. was proposed—that is, in the late spring or the early summer of 1933. They found themselves confronted with a problem that involved except for a few key people, some ignorant workers from the tobacco fields to be trained.

Let me digress from that story just for a moment—no, I will come back to that later. They applied to the local N. R. A. as they called it. They did not know exactly what it was and I am not able to identify it—there have been so many local N. R. A.'s and they change with such kaleidoscopic rapidity that we cannot keep up with them—but there was some such N. R. A. there, and they stated their problems to them. This local N. R. A. board told them that there was tolerance for beginners in the code of 70 percent for beginners to take the place of former homeworkers. They said, "You have not any former homeworkers, you have not had any factory, but that is

broad enough to cover you so that you can go ahead with 70 percent of the minimum wage."

They went along doing that supposing they had the authority for doing it, until a field auditor for the clothing code authority came down, a Mr. Wolf, and he told them that they were violating the minimum wage law and would have to make restitution and elevate the wages. They explained the situation to him and Mr. Wolf said there was not anything he could do about it, and he was correct about that. He had no authority in the matter, and all that he could do was report the facts to Washington or to the code authority.

He reported the facts to the code authority and they came up here and had a hearing before the "2–D" committee of the clothing code authority, and Mr. Matthews who is mayor of Shelbyville, Ky., came along to protect his brood the best he could, and the clothing code authority told them that there was nothing that they could do about it, that he would have to make restitution.

His case was then certified to the Compliance Division, and he came to Washington and had a hearing before the Compliance Division. Apparently the Compliance Division was a little sympathetic, but they said they could not do anything about it and referred him to the administrator to apply for an exemption from the law.

Then he made application to the administrator for an exemption from the law. He was able to show that paying 28 cents an hour, which is 70 percent of the minimum of 40 cents, paying those wages, a coat cost him, actual production cost, $3.50, where a coat of that plan and specification was made in the New York market under contract at $2.50. I may not have the figures exact, it may be $2.52 or something else, but there was approximately a dollar difference in the production cost.

The factory was absolutely shut down. He asked for permission to reopen for a limited time until he could train his help.

He stated how long he wanted—it was either a season or two seasons being a full year. He thought perhaps he could train his people if he had that indulgence.

There was never any formal order made in the case that I have been able to find, and I have tried to find it, but it appears that the company did get some kind of informal communication granting them indulgence for a few months of the past, diminishing the effect of his past sins. He had a bill then pending against him for deficiencies of some $3,000, and that bill was abated by a small amount, so that he owed somewhat less than that at that time.

That bill against him is still pending; he has reopened and is attempting to operate, and the last I heard from him was perhaps a month or two ago when he told me they were continuing to lose money.

That is the whole story, and if I am mistaken in any minor matters, I know that I am not mistaken in any of the substantial facts. This story is copied in the Green Book and may be referred to there. I have met Mr. Mathews, the mayor of the town. He is a gentleman of the very highest type and very much disturbed about that situation.

Senator KING. How many of the local people there were taken off the rolls, or at any rate, given employment in this new enterprise?

Mr. CURLEE. He gave employment to something over 100 people, all of whom petitioned for redress.

Senator KING. What do you mean by that?

Mr. CURLEE. Petitioned for relief, I mean. They petitioned that he might be granted the indulgence that he asked for, stating that they were making more money than they had made before for years and wanted their jobs and they knew that they could not get more money, but they wanted their jobs as they were.

I do not think it takes any prophet to foresee that they won't be in business very much longer. Their capital is already very much impaired. That is an example, but it is only one example of what we may foresee. No one else who is at all advised of what he is doing would dare open up a new clothing industry.

In the New York market we have standardized wages, contract shops, standardized production according to definite plans and specifications for each type of market, and a standardized contract price. Every manufacturer, so-called, that is, distributing manufacturer, who contracts with a contract shop out of the some seven or eight hundred in New York, no matter which ones he contracts with, he pays an identical agreed price agreed for the whole market of $2.52, we will say, for a coat no. 4. With that standardized and the rest of the country cast into that mold, designed to fit New York practices, we can never expect any expansion of the industry in the rest of the country. It is a dead industry. I do not think we can expect a survival of those that we have.

Let me give you another example. First, I ought to digress in that connection and state the remedies they have. General Johnson made numerous speeches throughout the country in which he said, "This is not a boycott, this is not ballyhoo", and then proceeded to show what it was.

In the speech in my home town which considerably terrorized the population, he had this to say:

> Guilty as charged. Guilty of trifling with this great chance to lift this country out of economic hell. Guilty of a practice as cheap as stealing pennies out of the cup of a blind beggar. What should be done with such a man? No jail deserves to be dishonored by his incarceration. As happened to Danny Deever in Kipling's regimental hanging—N. R. A. will have to remove from him his badge of public faith and business honor and "tykin of his buttons off and cut his stripes away" and break the bright sword of his commercial honor in the eyes of his neighbors—and throw the fragments—in scorn—in the dust at his feet.

St. Louis was almost deserted the next day. There was a man from the east side, right across the river in Illinois, had come over, he knew that General Johnson was going to be there, and had come over to discuss some of his problems with him. He heard this speech and was so terrorized that he went right back home without asking for an interview.

In this same speech he says:

> It is a sentence of economic death. It will never happen. The threat of it transcends any puny penal provisions in this law.

Senator CLARK. That is what the boycott always means, does it not, Colonel?

Mr. CURLEE. That is what it is intended to mean, but I never before have seen one as effective as this one.

The General, though, reiterated that this was not a boycott from time to time, but then explained what the process was.

Here is another from a speech in New York City:

As the Angel of Death, at the Passover, omitted those houses that showed no crimson palm mark on the lintel, so do you pass by any shop window or advertisement that does not display the eagle.

If that is not a boycott, the courts have all been wrong in their definitions of boycotts.

Those were not merely the fulminations of General Johnson. There is an official publication, the National Recovery Administration Bulletin No. 4, entitled, "What the Blue Eagle Means to You and How You Can Get It." On page 2 is the heading, "How to Earn the Blue Eagle", and then no. 1, no. 2, no. 3, and no. 4. And no. 5 C, "Deal Only With Others Under the Blue Eagle".

If an authoritative admonition saying, "Deal only with those doing thus and so" is not a boycott, I think the courts have all of them in their definitions of boycott, failed.

Senator COSTIGAN. When was that speech by General Johnson delivered?

Mr. CURLEE. You mean the one in St. Louis?

Senator KING. Was not that something like the orders of Mr. Hitler in Germany not to deal with anybody that was a Jew? Boycotting them?

Mr. CURLEE. Very much; yes, sir. Identical. This speech in St. Louis was on August 13, 1933.

Senator COSTIGAN. The population which moved out the next day has returned? [Laughter.]

Mr. CURLEE. I do not think that man from the East Side has ever been back, Senator. [Laughter.]

Senator COSTIGAN. You have continued in business ever since this speech was delivered?

Mr. CURLEE. Yes, sir; in trepidation, fear, and trembling all the time.

Senator COSTIGAN. Nevertheless, if I understood your testimony, you stated that your production has increased as well as your profits?

Mr. CURLEE. That is correct. I believe the profits of a great many large, well-organized institutions have increased under the New Deal.

Senator COSTIGAN. You would not describe it as economic death?

Mr. CURLEE. I believe it means economic death to Shelbyville, Ky. It does not mean economic death to well-organized, large institutions who are strong enough to take advantage of existing conditions, in my opinion, Senator.

The New York speech was on January 18, 1934, before the National Retail Dry Goods Association.

In the matter of Government contracts, Government-aided contracts, Senator Johnson's appeal was a boycott addressed to the consuming public:

See that this is a sentence of economic death. Strip the buttons off yourself, you consumers, and hang him in the morning.

Senator KING. Let me ask you a question. Is the N. R. A. label still used?

Mr. CURLEE. The N. R. A. label is still in full force, Senator, and is the most effective boycott weapon that has ever been devised out of the whole scheme.

Senator KING. Is its continuance warranted with title I of the act having expired by limitation?

Mr. CURLEE. It seems to me that that is contrary to and irreconcilable with the N. R. A. Act itself, the Industrial Recovery Act. The Industrial Recovery Act authorizes for a limited period of 1 year, certain licensing provisions by the President, and no one else was given any licensing power or the power to require a license as a condition to do business. In defiance of the act, some 42 industries, I believe, is the number, have provisions in their codes which make mandatory the affixing of an N. R. A. label to every commodity produced. The code authorities of those industries, on charges on violation of the law, remove the labels, withhold the labels, which orders when approved by the Administrator, become effective and sentence of economic death is imposed.

The retail codes, Senator, contain a reciprocal provision making it an offense for any retailer to handle any commodities which do not bear a label.

Senator CLARK. It was testified here the other day on behalf of the code authority in this particular code that for a manufacturer to put out his product without the label constituted not only a sentence of economic death but a criminal offense.

Mr. CURLEE. That is correct, Senator, but you will find in those label industries that there has been no disposition on the part of anyone to produce anything without a label because he cannot sell it if he does. It is sterilized and useless. No retailer will dare handle his product.

Senator CLARK. It is the contention of the code authority that if he did he would be committing a criminal offense.

Mr. CURLEE. Exactly. They use that as a constant weapon of terrorization. They do not threaten an alleged offender, and I wish to repeat, because I think it is important, that in this industry the complaints over minimum wages have been absolutely negligible. The complaints have been over these vague and nebulous provisions and attempts to standardize the whole country into the mold of eastern practices. Those are the offenses charged.

There is no yardstick by which you can measure the man's guilt or innocence, and industry guesses at its peril, and then they are hauled up before the code authority, and then do they say, "We will prosecute you for violating the code?" Not at all. They say, "We will jerk your labels away from you" and your sentence of economic death is complete.

They not only say that but they have done it. The *Greif case*, which has been mentioned here, in that case there was a charge against Greif of violations of article 2 (b). There have been charges against nearly all of the leading elements in the industry. There have been charges against the Curlee Clothing Co. over that, as I have told you a few days ago.

These charges against Greif were only for violation of article 2 (b) that and that alone. The code authority found it guilty, he went to the Compliance Board, the Compliance Board found him guilty and ordered his labels taken away. Greif applied for an injunction in the United States District Court of Baltimore, Md., making as parties everyone he could reach, and asking an injunction against any prosecution of him for alleged violation and against any interference with his use of the labels.

Senator COSTIGAN. Do you recall the specific charge against L. Greif & Bro., Inc.?

Mr. CURLEE. The specific charge against L. Greif & Bro., Inc. was for violation of article 2 (b), Senator.

Senator COSTIGAN. Translate that into terms for the record.

Senator KING. Just what is the provision 2 (b)?

Mr. CURLEE. While we are looking for the exact language of that, Senator, may I proceed?

Senator KING. Certainly.

Mr. CURLEE. He sought and obtained from the United States District Court of Baltimore an injunction. I believe I stated the terms of that. There was a motion to dissolve the injunction and that was heard. General Johnson was at that time on the high seas, returning from some trip on the Pacific. He reached a port on the West coast and was told about this and about the injunction, and he said, "I will jerk his labels and I will tell the world why", and his labels were jerked, but no one has ever told the world why, that I know of.

Senator KING. Were they jerked while the injunction was in effect?

Mr. CURLEE. They were jerked while the injunction was in full force and effect, but the judge, by reason of his territorial limitations, was not able to reach into Washington to enjoin the parties who had control of the labels. Greif was compelled to capitulate because he could not sell his merchandise.

Now, supplying an answer to your question, Senator Costigan, section 2 (b) is this:

> The existing amounts by which the wages in the higher paid classes, up to classes of employees receiving thirty dollars ($30) per week, exceed wages in the lowest paid substantial classes shall be maintained.

Senator COSTIGAN. Is it a fact that L. Greif & Bro., Inc. were required to pay several thousand dollars deficiency in wages?

Mr. CURLEE. I am not informed about that, but I am informed that they paid none of the bill which had been presented against them.

Senator COSTIGAN. Was there an order at any time that they should pay a deficiency in wages?

Mr. CURLEE. The order of the code authority and of the compliance board was that he should make restitution of a large amount of wages alleged at that time to be in arrears. My information is that none of that was ever paid under the terms of the agreement.

Senator COSTIGAN. Was that question ever judicially determined?

Mr. CURLEE. Never judicially determined except by the interlocutory order of the court that made the preliminary restraining order. Insofar as a court could adjudicate at that time, the court had adjudicated in favor of Greif. Of course, the court declined to pass on the merits of the case. He deferred that for later action, and expressly said so.

I would like to read from the oral opinion of Judge Coleman in that case. This is the official stenographer's transcript. I won't read it all. The court's comments are interesting.

Senator KING. Was that in the interlocutory hearing?

Mr. CURLEE. This is the court's own opinion at the conclusion of the arguments of the motion to dissolve. There was argument and testimony there.

The court said:

> An order will be signed in conformity with the findings of fact.

That is, he found facts and declined to dissolve the injunction, and then he added:

The court cannot refrain, in conclusion, from making this statement: That it is not impressed with the attitude of the Government in a matter of this kind. The court has before it what might be called a surfeit of counsel representing various branches or agencies of this particular department of the Government. It would seem to the court that the Government authorities would welcome some opportunity to test their authority. If they do not have the authority claimed, then it is time that they be told that they have not got it. And I want to make it perfectly clear that the Government authorities are not going to get from this court any encouragement in the sort of tactics which have been too prevalent, I think, today. By that I am not referring to the fact that they have asserted certain questions of jurisdiction. That has been their right. I do not think they had any merit in them, but that is not what I am now referring to specifically. I am referring to the general attitude on the part of the Government, which I think is nothing short of an evasion of their full responsibility.

Then there is some comment on the law, which I will omit. I will be delighted to put the whole opinion in the record.

Further he says:

There is no provision in the law, unfortunately, setting up definite machinery. It is all vague—too vague—to accomplish efficient operation, apparently, because we have here an example of a diligent complainant that has not known exactly where and how to proceed. I am satisfied from the evidence that the efforts were made in good faith. Complainant acted upon statements made to it by those ostensibly in authority. There was nothing else for it to do. And I am satisfied it had a right to resort to the court.

That was in answer to a contention that many of the Government counsel had, among all of these administrative remedies and rules of procedure, they had in trying to plot their tortuous and devious course through it, they had plotted the wrong course. That was the evidence adduced by the Government.

The court continues:

I am not now attempting to pass upon the validity or invalidity of the law. That is a question which can only be determined when the whole matter is fully presented and both sides are given an opportunity to be heard. But, as I said at the outset, I do not think the court can refrain from depreciating the attitude that has been displayed today on the part of various representatives of the Government, instead of an attitude of willingness to meet these issues which are new—and we are all blazing a new trail under these laws, which means that there ought to be an attitude on the part of the Government, if business is to be fostered, to meet business fairly and squarely and have the issues thrashed out, instead of resorting to refined and highly technical questions. And I say refined and highly technical questions and methods, because when the very people charged with the administration of this law take the stand, as has Mr. Hoffpauir, and by evasive answers seek to give the impression to the court that no one but the President and the Administrator have any power to do certain things—things which complainant fears may be done—well, that does not favorably impress the court, because the documentary evidence is directly contradictory to that.

Now, it is not the function of this court to encourage business or to enter into the economic field—that is not a concern of this court, and it is not a concern of this court, as a practical matter, whether this law is good or bad, but it is a concern of this court to see that when litigation arises, that it is pursued not only with diligence but with fair play. And I do not think the Government has approached this sort of litigation in the spirit that business is entitled to, particularly when the Government's main ground for attempting to resist the contentions of the plaintiff, is that the business involved is Nation-wide, and that what is done here in Baltimore by this company and its other plants affects business as a whole. That may be true. I am not passing upon that. That is another matter, but pettifogging must be put aside.

May I offer that opinion into the record?

The CHAIRMAN. Yes.

(The document directed to be inserted will be found in appendix, after the close of the day's session.)

Senator CLARK. As I understand, Mr. Curlee, the reason assigned for the fact that the court in this case could not enjoin the taking away of labels was because they could not get service on the code authority.

Mr. CURLEE. That was the reason.

Senator CLARK. Because they were outside of the territorial jurisdiction.

Mr. CURLEE. It got service on the compliance director for the State of Maryland; it got service on one member of the code authority who was resident in Maryland, but he did not have enough of them in to prevent the actual act or to place them in contempt; in other words they acted contrary to the decree of the court, but perhaps not in technical contempt of it, because they were not in the territorial jurisdiction.

Senator KING. How many organizations were represented in the defense in that case? How many lawyers, if you know?

Mr. CURLEE. I was told there were 21 lawyers representing various branches of the bureaus of the Government. There were numerous arguments made.

Following that, this has been widely circulated among the clothing trade:

"Clothing firm ousted by N. R. A. 'Blue eagle' authorities crack down to protect higher-paid workers." by the United Press dated Washington, July 26, 1934.

This excerpt has been widely circularized in the circulars issued by the Amalgamated Clothing Workers Union. It is a press dispatch widely circulated and reads as follows:

Ignoring a Federal court injunction, the Men's Clothing Code Authority was instructed to withhold N. R. A. labels from its second largest industry member, L. Greif & Bro., Inc., because of violation of code provisions to protect workers receiving more than minimum wages.

The present order cuts around an injunction granted in Federal court at Baltimore restraining N. R. A. from taking away the "blue eagle." It is pointed out that no retailer can handle Greif garments without N. R. A. labels. It was indicated that the Recovery Administration would go further and remove the insignia and institute prosecution in the near future.

The Greif firm claimed that loss of the "blue eagle" would cause cancelation of orders amounting to $1,250,000.

May I introduce this into the record?

The CHAIRMAN. Yes.

(The balance of the circular referred to is as follows:)

To all clothing workers:

The reason for the removal of the "blue eagle" labels is that this company has been charged with violating section II, (b), which reads as follows:

"(b) The existing amounts by which wages in the higher-paid classes, up to classes of employees receiving thirty dollars ($30) per week, exceed wages in the lowest-paid substantial classes shall be maintained."

This means that anybody who had been receiving less than $30 a week, should have received on September 11, 1933, in addition to the 20-percent increase, the same increase that was given to the lower-paid sections, to bring them up to the $14.40 minimum. Have you received this increase?

If you have not, you have once more been taken advantage of and your firm has violated the code in the same manner as L. Greif & Bro., Inc. are being charged with; and are in danger of receiving the same treatment.

The N. R. A. has but 10 months to go—then your employer will try to go back to the long hours and miserably low wages that existed before. Protect yourself—join the Amalgamated now;

Fraternally yours,

CINCINNATI JOINT BOARD, A. C. W. of A.

Mr. CURLEE. So far as the unwillingness to meet the issues is concerned that Judge Coleman spoke about, I do not know how to interpret the dismissal of the Belcher case that is reported in this morning's paper, but I believe that the public at large will construe that as evidence of an unwillingness on the part of the Government to have the case decided on the question of constitutionality.

Senator KING. What is the Belcher case?

Mr. CURLEE. It is a case that comes up from a southern lumber mill in which the operator was indicted criminally for paying less than the minimum wage and working more than the maximum hours. A demurrer to the indictment was sustained and the Government appealed. The case is now pending, a direct case and a flagrant case of violation, if the act is constitutional, a clear and flagrant case of the violation of the terms of the act. It is set for argument next month. The argument is impending now, and if the newspaper reports this morning are correct, the administration has decided to dismiss the appeal.

Senator COSTIGAN. Colonel Curlee, did you appear as counsel when the Greif case was before the N. R. A. Code Compliance Authority?

Mr. CURLEE. I asked leave and obtained leave to appear as amicus curiae in the Greif case.

Senator COSTIGAN. Was Mr. Leonard Weinberg the chief counsel?

Mr. CURLEE. Yes, sir; Mr. Leonard Weinberg was chief counsel.

Senator COSTIGAN. Do you recall whether the testimony showed that the precode wages paid to workers by L. Greif & Bro., Inc. were approximately $6 a week?

Mr. CURLEE. I have no knowledge of that at all, Senator, but I doubt it very seriously.

Senator COSTIGAN. Was there testimony to that effect while you were present?

Mr. CURLEE. While I was present in Baltimore in court, you mean?

Senator COSTIGAN. No; I refer to the N. R. A. hearing.

Mr. CURLEE. I was present at the N. R. A. hearing. I am trying to identify it. I was present at the hearing before the Compliance Division. There was a mass of figures presented, Senator. I do not recall any testimony at all to that effect, but the field auditor's reports were all there. I did not inspect them. There was a lot of comment on those.

Senator COSTIGAN. Would you be surprised to know that the wages were approximately $6 a week in the precode days?

Mr. CURLEE. The average of all of the Greif plants?

Senator COSTIGAN. I refer to the wages of a substantial number of employees.

Mr. CURLEE. Senator, I do not think that a distinction is important. A few days ago, you remember, I said something about the difference between an average wage and a mininum wage. I can easily conceive of the propriety of a beginner earning say nothing for a short time until she learns the trade.

Senator COSTIGAN. If a return to precode conditions should be sanctioned by Congress, is it your opinion that we are likely to return to such conditions as I have mentioned and as you have mentioned—no minimum wage payments or payments aggregating not more than $6 a week for workers?

Mr. CURLEE. Senator, I am not convinced that those conditions obtained, so I would not like to prophecy a return to conditions based on an hypothesis that has not been established. I think a return to a wage condition under the law for a free flow of economic forces and interplay would result in good times and when money is plentiful, in high wages; in bad times, in low wages.

Senator COSTIGAN. In what average wages for workers?

Mr. CURLEE. In what average? I could not give any estimate for that, Senator.

Senator COSTIGAN. You could make no forecast of minimum wages which might prevail under the free play of competition?

Mr. CURLEE. Under conditions as they obtain now, if business—well, I do not claim any gift of prophecy, and what I am about to say as an economist and a prophet is perhaps worth next to nothing, but I do believe that if the N. R. A. is permitted to lapse, and if business is permitted to go ahead, that we will see a revival of business. If they will take the leading strings off and let business go ahead, it will result in increased wages and increased production.

Senator COSTIGAN. Above the minimum wages now in effect?

Mr. CURLEE. In some cases.

Senator COSTIGAN. What I am trying to develop is whether in better times you had wages as high as those now safeguarded by the minimum wage provisions.

Mr. CURLEE. Senator, I dare say in better times, with comparable average wage, we will see in a given institution, that the minimum wages were perhaps lower, but the solution is not a minimum wage. It is not the test. Without this, without the N. R. A., and without the minimum-wage provisions, if we get good times, it is conceivable that in a given institution the average wage may go up and still the minimum may go down, because of beginners, less capable workers, and so on. Putting in a minimum wage, Senator, in my opinion, that does not elevate the wages of those workers to that minimum. In most cases I believe it results in the elimination of those workers from the pay roll entirely.

Senator COSTIGAN. Were you satisfied with wage conditions in the precode days?

Mr. CURLEE. I was not satisfied with the wage conditions or my own earnings or any other conditions in the depression days.

Senator COSTIGAN. Do you think the worker can be protected and assured a minimum or decent subsistence without statutory safeguards or effective collective bargaining?

Mr. CURLEE. Senator, pardon me, I would like to discuss those things with you, but would you like me to get through with the factual statement first?

Senator COSTIGAN. I have no other questions to ask you except one. If you could answer that briefly—do you feel that the workers will be as well safeguarded in the absence of the N. R. A. as they now are?

Mr. CURLEE. I believe that the lot of the workers and of all others of our population, Senator, will be better off if production, industry, and business is given a chance to operate and function. I do not see the interest of the worker as distinguished from everybody else. I think we are one people—worker, farmer, professional man—and our interests are all bound up together. In prosperity we all enjoy good incomes. In days of adversity we are substantially all reduced.

Senator COSTIGAN. Did the workers enjoy any increase in the precode days under that system?

Mr. CURLEE. I think they did.

Senator COSTIGAN. What were those incomes, approximately? What have you in mind as a decent level of subsistence for a worker in the men's clothing industry?

Mr. CURLEE. I have not in mind any figure. In Shelbyville, Ky., it would be very low. In Chicago and Rochester, making the highest grade of product, it would be high. In places like St. Louis, for example, it would be a mean between the two. Shelbyville, Ky., would be very low at any and all times, I think.

Senator COSTIGAN. You have very frankly indicated your lack of concern over minimum wages provided they are uniform. Is it true, nevertheless, that your association requested the elimination of wages above 40 cents an hour for workers?

Mr. CURLEE. We did certainly object from the very beginning to this article 2-B, and we have repeatedly requested its elimination since that time.

Senator COSTIGAN. Including the elimination of wages above 40 cents an hour?

Mr. CURLEE. Not all wages above that—I do not know that this is important, but cutters and off-pressers are classified as separate classes, but omitting that, we have contended earnestly for the elimination of article 2-B and still do.

Senator COSTIGAN. In other words, you regard 40 cents an hour as a decent level of subsistence?

Mr. CURLEE. I do not so regard it, Senator. I say that a minimum wage will not be the average wage, and after all, establish a minimum wage of 40 cents and you have clothing institutions operating at from 40 to 45 cents an hour. Employees earning from 40 to 45 cents an hour. That is, I believe, the average for the industry according to the testimony produced—I do not know how reliable it is, or just what the basis of it is—that it is 60-odd cents with a 40 cents minimum.

Senator, may I finish by factual statement? I would be glad to go back and discuss this with you?

Senator COSTIGAN. That is the last question I desired to ask you.

Mr. CURLEE. I hope that you will return to your questions, Senator, but I would like to get through.

Senator COSTIGAN. No, please proceed.

Mr. CURLEE. Now I want to give you another example or two of this power of economic lynch law that these people possess. A man may vindicate his rights in court and win a victory, but it will be a posthumous victory. I understand that Milliken finally had his rights adjudicated and vindicated by the Supreme Court of the United States in Civil War days, but if I recall correctly, they hung him before the vindication. That is what happens in these cases.

Let me give you another example. There is a client of mine who is perhaps the smallest manufacturer of clothing in the United States with a completely integrated factory. There may be smaller contract shops—I do not know. This is the Greenspoon Clothing Co. of St. Louis, employing about 30 people. Mr. Greenspoon has been in business there for many years and enjoys the respect of the community, and has been in harmonious relations with his employees at all times, respected by everyone who knows him, and a man of high character and a fine fair man.

He did his best. After about 9 months of operation, a field auditor came around and checked him up.

Senator KING. You mean after operation under the code?

Mr. CURLEE. After operation under the code. After he had been under the code for about 9 months and no complaint made, the field auditor came and audited his books for those 9 months of operation. He found that he owed—no minimum wage involved here—he found that he owed $35.06 alleged deficiency owing to five employees. To two of them he owed less than a dollar apiece. To three of them he owed a few dollars apiece. The aggregate of his deficiency was $35.06.

He got a demand for that. He wrote this letter to the executive director of the clothing code authority. The field auditor's report had been in about 2½ months at that time, but Greenspoon had just gotten his demand. He said:

I have received your letter of November 17, in which you say I must make application to you on November 27, and that you will not allow any further extensions.

I run a small shop and employ about 30 people altogether. I have more operations than I have employees. The piecework rate from my operations before the code ranged all the way from a fraction of a cent up to 5 or 6 cents, and some operations higher. It did not seem practical to make increases on some of the smaller-priced operations, but I made more increases than was necessary on some of the higher-priced operations. The work was so distributed as to distribute the benefits of the increases that were made.

This situation is somewhat complicated, and I find myself unable to present the case properly without outside assistance. I have employed Ernst & Ernst to go through the accounts and present the figures properly. I have just recently returned to the city, and the time you give me is entirely insufficient.

He got a letter in replay giving him 10 days and saying that the case had been pending so long, they would not give him any more than 10 days. He was unable to complete his audit in 10 days, but he did get Messrs. Ernst & Ernst to work on his books.

Senator KING. Are they the nationally known auditors?

Mr. CURLEE. Yes.

The letter concludes:

The amount claimed by you, $35.06, is not enough to fight over, but I feel that a great injustice would be done me if I should be required to make back payments to my employees if I do not really owe them anything. I am sure you do not want to do any such injustice, and I do not see the reason for any great haste, as my employees are all satisfied and are not complaining. I simply want time to get at all the facts and show them to you, so that you will understand. I shall let you have my figures as soon as the auditor can get them together.

At this juncture he came to me for advice and I told him this. I said:

Mr. Greenspoon, if any individual person claims that you owed him $35.06 and you claimed you did not owe it, you would invite him to bring suit against

you in a justice of the peace court; and if he prevailed, you would pay it; and if you prevailed, you would not have to pay it; but you are confronted with a grave situation here. This is not going to be any suit over $35.06. You do not get a chance to adjudicate it. They will take your labels away from you and you will be put out of business.

We went on and had Ernst & Ernst audit him, and it disclosed to us, in the first place, that he did not owe the $35.06; and it disclosed, in the second place, that to his remaining employees, according to the code authority's own standards of demand, he had overpaid $507. That is certainly evidence; if nothing else, it is evidence that the man was not a cheat and a chiseler. According to their own figures, he had overpaid the great majority of them $507, and he had underpaid five of them $35.06.

We had a hearing before the 2 (d) committee in New York City. I went up to attend the hearing and Ernst & Ernst's auditor was there and we had the hearing, and the case was taken under advisement; and since I have been in New York on this trip, Mr. Greenspoon forwarded to me a letter from the code authority stating that it was inadvertently referred to the wrong committee and he would have to pay $35.06. The case is still pending. He has not paid the $35.06, and he may have his labels jerked away from him at any moment. He may get another hearing in Washington, D. C.

It makes no difference how his rights may be finally adjudicated. At the end of the litigation he is put out of business after a trial by some member of a bureau in Washington. The code authority cannot convict him finally; he has his right to appeal to Washington, to be tried here.

The CHAIRMAN. You have about 10 minutes more.

Mr. CURLEE. It is my belief, Mr. Chairman, that we have come to a parting of the ways as to whether our rights shall be determined by the judicial process or by a bureaucracy. I do not think there is any middle course. The situation has come about where not only your rights are adjudicated by these tribunals, but there is a bureaucratic finger in every pie.

I will give you one example of that. I spoke of the Goodall Co. The Goodall Co. are manufacturers of summer clothing, mixed wool, rayon, and whatnot. When the clothing code was approved, the pants manufacturers were under the clothing industry. The provisions for the clothing industry were so onerous that they made application to be released of that and come under the cotton-garments industry where the provisions were less onerous. They contended that they were in competition with overalls where there was a maximum wage of $13 a week, I believe, with no provisions for the higher brackets. The men's clothing code had $1 for cutters and 75 cents for off-pressers, and they could not stand the competition with the manufacturers of cotton pants. An amendment was effected so that the manufacturers of cotton pants, when he worked in clothing factories, was put under the garments code, the cotton-garments code. That is a right intricate thing, but they adjusted their processes of manufacture to segregate them properly and got them under the cotton-garments code.

Then came along the proposition of the summer wash suits.

Digressing from that a moment, we find in the new amendment here, and they got under the cotton garment code and then they came in competition with the lower grades of woolen pants. So that

on the recent amendments, there is a proposal by the clothing code authority——

Senator KING (interrupting). Who proposed these new amendments?

Mr. CURLEE. To get the cotton manufacturers of pants out of the code?

Senator KING. Which amendments are you speaking of?

Mr. CURLEE. Those heard at the February 1 hearing. We had a proposition there that workers on pants be paid 10 cents an hour less than workers on coats. There is not any difference in the wage scale or the skill or ability in doing that work, but the difference was made because of the competition of cheap pants. This was odd pants. Suit pants provide for a certain minimum, and odd pants for a lesser minimum. Entirely disrupting the internal workings of an industry to attempt to adjust a differential which was artificially created in the first place.

Another example: The manufacturers of cotton wash suits were given certain concessions in the code. Summer wash suits of all cotton was the definition. They were allowed longer hours and lower wages. Mr. Ward has another application pending. He does not make that character of garments. He makes garments of a mixed content, as I told you, popularly known as "palm beach." That is his trade name. He said, "I am in direct competition with the cotton wash suits, and I want special concessions in hours and wages." That hearing was held about 2 weeks ago, and I was present at it. He told of this competition there, and his necessities for it.

There is a lot to be said, and he did not fail to say it, but there were other manufacturers there who said "Mr. Ward's product is in direct competition with my summer products, making identically the same kinds that he makes under different trade names. If you do that, and describe this character of garment, I draw the line there." Others said, "Well, we make garments not identical with that but in direct competition with it, called 'tropical worsteds and summer worsteds', and if you draw the line, draw it above the tropical worsteds." And the suggestion was made that tropical worsteds are in competition with lighter weight regular worsteds, and the only thing that could be done was to exempt everybody from the operation of the code.

That illustrates the difficulty. The administrators and the numbers of advisers sat around puzzled and bewildered over this problem, and well they might be, because there can't be a thing done in the industry without coming to Washington and getting an interpretation and an order. It is absolutely beyond human capacity for Washington to furnish enough bureaus, and enough skilled experts to direct the people in Shelbyville; Mr. Meyers in Rochester, Mr. Ward with his four plants, and everyone else in the industry, what they may do and what they must not do. It is too much to expect.

It is no reflection on the capacity of the men in charge of it to say that. It simply cannot be done.

Mr. Chairman, I am through.

Senator KING. You mentioned just one matter that you said was the subject of controversy. What was the trouble in connection with that?

Mr. CURLEE. The trouble in connection with that is this: I intended to dilate, and I wish I had a chance to do it.

Senator KING. Do it very briefly.

Mr. CURLEE. Very briefly, it was this: The difference between the lowest-pay substantial classes and the higher-pay classes shall be maintained—leaving off the refinements. There was no intimation of what the lowest-paid substantial classes were. The code did not define it. The code authority came out with an interpretation, which apparently was nothing but new legislation, but the industry had no objection to it. It said that the lowest-paid substantial classes shall include 20 percent of all of the workers. The manufacturers' problem there was to see what his classes were—they are classified differently in different factories, but each manufacturer has no difficulty in classifying his workers. Apparently that was to include the lowest 20 percent. So the manufacturers who could so classify them and went to work and adjusted their wage scales in accordance with that—they did so.

Then came another interpretation. Its origin is mysterious, but it in substance requires not classes including 20 percent, but that 20 percent of all the individuals receiving the lowest scale of pay. That is possibly understandable. And then on top of that comes the famous Herwitz formula. If members of the committee are interested in that, there is a brief chapter on article 2 (b) and on the Herwitz formula in this Green Book, in its practical application. It is impossible for me to more than sketch it in outline.

Senator KING. Your objection, then, to this provision was its vagueness?

Mr. CURLEE. If I might just finish in a moment, I think I can show that, Senator. The Herwitz formula required an audit of a test week precode, before the code, and from that he determined the lowest-paid substantial classes. This was one method, but there were numerous ones. I will tell you one. One was to arrive at the lowest 20 percent that way. Then there was one to establish a differential involved with the compensation for reduced working hours.

I have some algebraic equations in the Green Book which will show those processes. It is shown on pages 25, 26, and 27 of the Green Book, but briefly he determined the hourly earnings required for each worker, each one computed separately, after having gotten the average for the lowest for the 20 percent. He computed the required minimum for each individual worker.

Bear in mind that nearly all workers are on piecework rates. Then he went further and gave the election to average the work by sections. A section seems to be a group of people performing an identical operation. He averaged them by sections. He saw what their wages were, what their wages are required to be, what the average increase in piecework rates for that section should be, in order to comply with all of these provisions; and having determined all of that, he thereafter absolutely ignored the actual earnings of the workers, for, having cast them into that precode mold, merely computed the number of hours they had worked, and said, "He has a deficiency of 2.6 cents per hour through all of this time, and he has worked so many hours."

Absolutely ignoring all subsequent experience. So that the whole scheme was absolutely cockeyed, absolutely unrelated to any facts or realities, and with that, and with its various interpretations, they may be interpreted in any way at all. I will say without any hesitation that there was no uniform application of that. The auditors' reports may be turned in uniformly, depending upon which particular formula they are using, but in the work in Washington there has been none, and I have asked the deputy administrator and the code authority to give us a list of the bills that were sent out, not a list of the names, but the aggregate number of bills sent out, and the changes in those bills, and the amounts realized on them as compromises, and the amounts still pending if the bills had been reduced. I have been unable to get any data on that.

Senator KING. The bill depends upon the formula adopted by the representatives of the code?

Mr. CURLEE. It depends upon the formula adopted by the representatives of the code and the ideas of the equities of the committee.

Let me say a word about the procedure of this committee and how these equities are determined.

Senator KING. You have only 2 minutes.

Mr. CURLEE. A field auditor goes out and makes a report. The executive staff examines that report, and decides in the first instance whether there is guilt or no guilt. If the executive staff decides there is no guilt, it does not come before it, and that is the end of it.

That is a wide latitude. They cannot convict but they can acquit. If they convict, it goes before the 2 (d) committee. If the 2 (d) committee finds no guilt, that is the end of it.

But there again is a wide latitude of discretion in that. If the 2 (d) committee finds guilt, it then goes to the Compliance Division. They may introduce and start and stimulate proceedings against any member of our group at will and may convict or not, in their discretion. We can start no proceedings or investigations against them whatsoever. So it is a one-sided game.

Mr. Chairman, I thank you and the other members of the committee for your patience.

Senator KING. We will adjourn now until 10 o'clock tomorrow morning.

(Whereupon, at 12 noon, the committee adjourned until Wednesday, Mar. 27, 1935, at 10 a. m.)

(The following appendix is in connection with the testimony submitted by Mr. Curlee.)

APPENDIX

The Rise of the Clothing Workers

(By Joseph Schlossberg)

(The following pages constitute the introduction to the documentary history of the Amalgamated Clothing Workers of America.)

The Amalgamated Clothing Workers of America has, within 6 years, extended its influence and jurisdiction throughout the United States and Canada. Its membership now embraces over a score of nationalities. In fact, 40 languages are spoken in the gatherings of the Amalgamated members. Men and women of different tongues and creeds are working together as one human family.

In this brief sketch of the present clothing workers' organization the writer has attempted to furnish the background, which, he hopes, will help in understanding more fully this great labor drama.

The material for the construction of a complete history of the clothing workers prior to 1914 is still hidden from view, though it is hoped that it will some day be unearthed and used. The writer was, therefore, obliged to draw entirely upon his own experiences. For this reason the discussion is mostly confined to New York, but it is substantially true also of other important clothing centers.

ESCAPING FROM RACIAL PERSECUTION

We shall go back a full generation, to the eighties of the last century.

Czarist Russia had included among its crimes against mankind the pale of settlement in which Jews were confined. The assassination of Czar Alexander II by Russian revolutionists resulted in a period of repression during which were passed the infamous May laws of Count Ignatiev, Minister of the Interior. These laws, which were particularly anti-Jewish in character, abolished the "privileges" heretofore enjoyed by the victims of the "pale" and intensified their humiliation and misery. Then, to complete the persecution, the Government organized a series of pogroms against the Jewish population of Russia.

The Wandering Jew raised his eyes to the great New World in the West. There hope beckoned to him. With a heavy heart he bade farewell to his home and the sacred graves of his ancestors of many generations and set out on the journey to distant America.

When the great masses of Russian Jews arrived in America in search of economic opportunities and security from pogroms, they were literally transplanted from the dark Middle Ages to modern civilization; from the handicraft system of production to the factory system; the medieval town to the modern metropolis; political autocracy to political democracy; religious persecution to religious freedom; almost total illiteracy to public education; finally, from complete absence of rights and liberties to a constitutionally guaranteed bill of rights. The new arrivals were bewildered by the sudden change and blinded by the bright light. All circumstances combined to render the newcomers excellent objects of exploitation, and the sweatshop received them with open arms.

Those who had the unenviable privilege of working in the sweatshop of those days will agree that General Sherman's definition of war as hell applies with equal force to the sweatshop; to him also will Dante's Inferno be more real.

Many of those immigrants were skilled tailors and they easily found employment in the numerous shops. Most of the others also found places in them and learned how to make men's and women's garments.

To those people the sweatshop was America.

The sweater, the owner of the sweatshop, who passed under the perfectly respectable name of contractor, was the middleman between the manufacturer and the worker. The contractor of today is performing the same economic function, but his position has been greatly changed through the activity of the union. Responsibilities unknown in the early days have been imposed by the

union upon the contractor and the most revolting physical and moral condition of the sweatshop have been entirely eliminated.

The sweatshops afforded the manufacturer many advantages. He was in a position to employ on his own premises a minimum of help, which meant a tremendous saving in rent, superintendence, and in other items. Thus two classes of shops developed: The "inside" shop, which was the manufacturer's own factory, and the "outside" shop, which was the sweatshop. Cutting was always done "inside" and tailoring mostly "outside." That was one big factor in setting the cutter-up as an aristocrat among the tailors. That feeling of "superiority", later fostered by the United Garment Workers, made cooperation between cutters and tailors impossible. The Amalgamated Clothing Workers brought about equalization by raising both the tailors and the cutters to a new, different, and higher level of "superiority", the high dignity of human brotherhood.

The tailors who were fortunate enough to work "inside" enjoyed better sanitary conditions, more or less regular working hours, and above all, security in wages. The sweater frequently absconded with the earnings of the workers. The latter had no redress. They were strangers to the manufacturer. He did not employ them; he employed the contractor only. One of the attractive features of the sweatshop for the manufacturer was his perfect freedom from responsibility to the workers. Today the union holds the manufacturer responsible for the workers' wages and for violations of the workers' rights by the contractor. If the contractor disappears with the pay roll the manufacturer must write another check for the workers. It is his responsibility and it is for him to protect himself from a dishonest contractor. The Amalgamated Clothing Workers, single handed, has brought about this improvement in the contracting system.

The sweatshop made human labor so cheap that there was no incentive for the development of machinery beyond the very simple sewing machine propelled by the power of the human foot. The introduction of new machinery in the clothing industry in New York, where the sweatshop flourished, coincided with the growth of unionism. As human labor grew more expensive machinery became an economic necessity.

The sweater came from the ranks of the very people whom he was bleeding white in his shop. Frequently there was close intimacy between the sweatshop owner and the sweatshop worker, and they addressed each other by their first names. They may have been playmates in the old country and gone to the same Hebrew school. As a rule the sweater was thoughtful enough to explain to his fellow townsman that $5 a week really meant 10 rubles. In Russia 10 rubles was an enormous amount to earn in 1 week. Usually, in the early years, the sweater had come to this country ahead of the employees. That and his employer status made him an "American" to the more recently arrived worker.

The manufacturer was of the same race as the sweater and the worker, but he was "superior" to both. He usually hailed from western Europe, mainly from Germany, where he had enjoyed advantages and acquired modern business experience.

The intimate personal relations between the sweater and his employees, the only redeeming feature of the sweatshop, were entirely absent in the relations between those two and the manufacturer. The social chasm that separated them was even wider than the economic one. The manufacturer looked down upon the workers with contempt; the workers looked up to the manufacturer with an animosity born of deeply felt wrongs. The sociologist will find valuable material in this remarkable fact of economic class cleavage running parallel with caste lines in the race which for thousands of years has been persecuted and oppressed.

It is different today. From the ranks of the lowly workers many have climbed to the high positions of large employers. Frequently they have been more successful among the exploiters than their former "superiors" and dislodged them. The caste lines are today faithfully following the dollar sign.

The early class struggles in the modern clothing industry in New York were Jewish class struggles; both masters and men were of the Hebrew race. The class struggle in Israel was fought in the clothing industry of the New World.

THE STRANGER IN A STRANGE WORLD

At Castle Garden (the landing place for immigrants at New York before Ellis Island was opened) the Russian subjects found an open gate. There were no immigration restriction laws to keep it closed. The country was in need of workers and people came from the other side of the Atlantic to meet that need. They

were allowed to shift for themselves as best they knew how in their efforts to adjust themselves in the new and strange scheme of life.

The industry that was to absorb them was so situated—it would be a mistake to call it "organized"—that it depended entirely upon the labor of those newcomers. The leaders of the industry did everything in their power to encourage the immigrants to leave their old homes and seek new ones, but they did nothing at all to befriend them when they arrived in America.

Those immigrants were helpless strangers. They came empty handed; but they brought with them physical and spiritual vigor, and they took up the battle of life under the new, strange, and unintelligible conditions.

At that time there was a well-organized labor movement in this country. The Knights of Labor, though on the decline, was still powerful and influential. The American Federation of Labor was then in its vigorous youth and rapidly gaining ascendency over the Knights of Labor. But no helping hand was extended to the increasing number of toilers in the clothing trades. Thus the labor movement, too, was allowed us to shift for ourselves. The labor movement, as to all others, were just human rubbish, trash. We were cheap labor from eastern Europe come come here to reduce the American standard of living. But the American standard of living that we found here, made for us not by us, was the sweat shop with its health- and life-destroying unsanitary conditions, long hours, short pay, and all their evil accompaniments. In our souls we rebelled but we saw no road open to us. We did not understand the technique of organization and organized struggle. The country we came from had no labor movement, no freedom of assembly or speech or press; no public life as it is known in civilized and democratic countries. We had the will to act but, lacking knowledge, we did not have the power. The labor movement could not understand us and did not realize that we belonged to it. Ours alone was the task of working out our salvation.

But strength came to us from a source that was peculiarly our own.

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We came from a part of the world where the people had no rights. We had dreamt about them, but never had enjoyed them. The dream of rights and freedom was sacred to us, not because of the high ideals in the terms of which we always spoke of them. In this country we found those wonderful things. Those who were born to rights and freedom considered them as natural as the air they breathed, but we, who had just emerged from political slavery, looked upon them as among the most precious possessions. We lived them, we felt them, we visualized them.

We did not know how to organize and secure improvements in our conditions, but the law of modern industrial relations, which places a distinct and separate class of workers on one side and a distinct and separate class of employers on the other, is irresistible. Consciously or unconsciously, the workers are at times forced by this law to band together and fight for their own class interest. That was what happened with us.

At first spontaneous skirmishes were fought by individual groups either against reductions in wages or for wage increases.

Those skirmishes, however, had a different meaning for us than they had for most American workers. When we formed an organization and gathered at a meeting and freely discussed grievances we were conscious not only of the immediate economic purpose of our movement but still more so of the fact that we were actually exercising and enjoying rights which we had never known before. Our organization and our meeting had the sanction of law and our speakers were not thrown into jail because they had formulated our complaints. It was a thrilling experience. We were happy and grateful to our adopted country while we were complaining of our employers.

The labor movement did not know us nor did it wish to know us. The spokesmen, the interpreters of our grievances, were therefore drafted from our own ranks. They had left Russia because of the same racial and political persecution that had driven out the rest of us. They were as inexperienced and helpless as the rest of us in matters of organization and tactics, but they brought with them from the land of persecution high idealism and youthful enthusiasm. They were Socialists. The foundation and background of their socialism was the struggle against czaristic autocracy in Russia. We were all filled with the spirit of that sacred struggle though we had not all participated in it. Those people spoke of us, wrote for us, and worked with us. Thus each one of our gatherings, whatever the immediate object, was an occasion for spirited propaganda for social justice in the broadest sense. In that atmosphere our industrial organization was born. We argued out great social theories of the future before we discussed

the "small" shop grievances of the day. * * * All our work was done in the broad and ennobling social spirit instead of a narrow craft spirit. Fortunately, neither we nor our leaders understood the situation. Had we known "better" probably we also, as a matter of momentary expediency, would have hewed close to the craft line. In fact, the craft divisions that later asserted themselves in our organizations and were subsequently eliminated by the Amalgamated, were the product of the "Americanizing" influence of the general labor movement. The Socialists were the only ones who helped us. None other came to us. Yet we have been denounced for the Socialist sympathies of our organizations. If it is wrong for our union to have a Socialist education the blame for that must be laid at the door of those who had cruelly estranged us, while the Socialists gave us the best that they had to offer.

With all of our idealism and enthusiasm we did not know how to do our work. Nevertheless we were determined to find our way. We groped in the dark. We bungled and blundered and met one disaster after another. Despite every failure we always had the courage to begin anew. Every time we were thrust to the ground, apparently crushed, we renewed the struggle to stand upright. The flame of light and hope in our torch were never entirely extinguished. We managed to keep it burning even in the severest storms.

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In 1888 the then existing Jewish labor organizations in New York, industrial and otherwise, formed the United Hebrew Trades, which is the central body of Jewish unions to this day. That organization coordinated and directed the activities of the movement. It has never been officially identified with the American Federation of Labor.

In 1890 the same organizations established the first labor paper in Yiddish—an event of tremendous historic importance for this movement. With the establishment of the weekly paper, Arbeiter Zeitung, the movement seemed to have more reality. The Arbeiter Zeitung carried its working-class message every week to the Jewish workers. The message was not only in the contents of the paper but perhaps more so in the very fact of the paper's existence. For the pogromed and rightless Russian Jewish worker to publish a paper, free and untrammeled, in their own language, giving expression to their own grievances and aspirations, was almost incredible.

Our own paper, written by ourselves and for ourselves; and not censored.

Not only the message of the journal but the very paper and ink on and with which the message was printed were dear and sacred to us.

Blessed America! How grateful we were for the freedom of the press!

In 1894 the daily Abend Blatt was added to the weekly paper. Both continued until 1902.

In 1897 the Forward made its appearance.

THE FIRST REAL CLASS STRUGGLE

The year 1890 was the beginning of a new era in which the movement, powerfully stimulated by its own press, began to assume more definite form.

That year saw the first clash in the clothing industries of the United States.

The manufacturers of ladies' cloaks and suits in New York did not relish the progress which the tailors were making in the science and art of organizing; they therefore attempted to strike a death blow at the undesirable movement by declaring a lockout. Eight thousand workers, all there were in the industry, were locked out from employment. This was an entirely new and very sensational item on our list of experiences. At first we were dazed. We had known of strikes but had never made the acquaintance of such an animal as a lockout. That lockout has left an indelible impression upon the writer who was among the locked-out workers. It was the first and the strongest link in the chain that has attached him to the labor movement for the rest of his life.

The struggle lasted 3 long months, in some factories 4 months and more. There were the terrific heat and humidity of the New York summer, the policemen's clubs, arrests, convictions, and, above all, starvation. Our new training was both extensive and intensive.

We won.

We should have lost, according to all laws of scientific organization and warfare. We won by the sheer force of our burning indignation against a crying injustice. Perhaps we would have lost if we had understood the situation better. Our ignorance was our fortune.

Our victory surprised us and amazed the employers. A new consciousness was born in us—the consciousness [sic.].

We had learned how to organize, fight, and win, but of power. Heretofore we were aspiring for it; now it was ours.

That first great and sweeping victory electrified the workers in the other clothing trades and gave the movement for organization tremendous impetus. It was so contagious that it soon assumed the appearance of a religious revival. "Old" unions were strengthened and new unions were organized with the fervor of religious fanaticism. Unionism, in its most ideal form, took hold of the people. We were sure that the millennium was at hand, and that we must organize hastily, feverishly, enthusiastically. We were in ecstacy.

There was a large group of old men engaged at rebuilding cast-off clothing, either sold by housewives or collected from rubbish heaps. They worked at the "homes" of their employers. They were loyal to the old orthodox customs and stopped work three times a day to chant their prayers. That was one of the privileges that kept them at the otherwise very unattractive occupation. They were outrageously exploited even for those days. Those oldest, most backward and docile of all clothing workers were also caught by the spirit of the time. They, too, formed a union and held enthusiastic mass meetings.

[sic.] We had not yet learned how to retain our victory. The other side was clever enough to cheat us of our success and nullify our triumph. The proud cloakmakers' union soon lost its power, and the other unions vanished almost as quickly as they had come. It was exasperating; it was heartrending. It was like a young and fruitful mother losing her children as fast as she gave them birth.

But we, those of us who felt the responsibility of continuing the work, never gave up. By the skin of our teeth we held on to all we could and kept on building and building anew, regardless of how many times we were obliged to start from the beginning.

THE GREAT DISILLUSIONMENT

About that time (1891) the United Garment Workers of America was formed. We did not know then that this organization was the child of a feud, within the Knights of Labor. We only learned later that the faction that was unable to retain its position in the Knights of Labor conveniently discovered that the American Federation of Labor was the right organization to join.

The American labor movement was still a sealed book to us. When we were asked to participate in a convention in New York, where a national organization of clothing makers was to be formed, the idea was inspiring to us and fired our imagination.

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We were strangers to politics, especially labor politics. When the cutters, Americans, were ready to assume the responsibilities of officering the organization we were grateful to them and happy in the thought that the new-born clothing workers' body would be led by Americans—Americans with experience and idealism.

We could conceive of people without experience being interested in the labor movement, which was our own case, but people without idealism? Never. What was there to hold them in the labor movement except the ideal?

We found that we were heartlessly deceived. Our loyalty and enthusiasm were exploited for the purpose of building up a corrupt labor-union bureaucracy. From that time until 1914, nearly 24 years, the story of the men's clothing workers is the story of corruption, betrayal, sold strikes, broken faith, crushed hopes.

We had rejoiced prematurely because the cutters became our fellow workers by joining the same organization. The cutter's sense of "superiority" was carefully cultivated by the officials, whose efforts in this direction were facilitated because of the fact the cutters and tailors did not work in the same factory and did not speak the same language. It remained for the Amalgamated to correct this evil.

Whatever little organization work was done by the general officers was confined to the cutters. The tailors were completely neglected; aye, the promotion of their organization, except to the point required by the "union lable", was intentionally discouraged, hampered, and obstructed for fear of their aggressive spirit. It happened that union officials secured from employers wage increases for cutters on the "friendly advice" that the employer take the increase out from the wages of the tailors. The tailors being many in number and the cutters few the employer profited greatly by the bargain while the officials of the union were under obligation to him. Wherever tailors did attempt to organize it was in spite of and not because of the activity of the international organization.

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The attitude of the general officers was that of private owners. The organization was their private property and they perpetuated themselves in office by "elections" from which the members were excluded. The shrewd politicians managed to impose their authority upon unsophisticated and helpless rank and file, but there was no cooperation, no solidarity.

As stated, the officers' interest in organizing the tailors did not go beyond the so-called "union label" which we soon learned was a fraud upon the workers and a source of corruption for the officials. The "union label" fettered the "organized" workers and made them infinitely more helpless than were the unorganized. Frequently "union-label" workers were compelled to scab upon their striking brethren in nonlabel shops. Where "union label" slaves refused to betray their struggling fellow toilers they were expelled by the general officers. The loyalty of the trade-unionists who demand the "union label" gave the employer and the faithless official a stranglehold upon the "union label" workers.

Far from being a guaranty that the garment bearing it is made under union conditions the much heralded "union label" may represent the worst kind of working conditions, not even barring prison labor. The most bitter enemy of the "union label" was the worker who was compelled to sew it on the garment. He knew that by this act he was deceiving those who were demanding the label with the idea that they were thus safeguarding his interests.

The dishonest and indifferent leadership of the United Garment Workers made effective organization work impossible. The energetic efforts of the young enthusiasts were mainly directed to fighting corruption and crookedness in the unions. Many turned away with disgust from the industrial organization; giving up the industrial struggle as hopeless, and intimately associating unionism with corruption, they dedicated themselves to the other branches of the labor movement; the socialists political organization, educational clubs, and mutual-aid societies. It was in this period that the now powerful Workmen's Circle was organized.

In New York an organization of plug uglies, known as "the Boys of London", fought the physical battles of the leaders against the members, and bloodshed was of rather frequent occurrence.

EXPLOITING THE WORKERS' MISERY

A hideous situation developed in New York in the nineties and lasted for several years. A gang, under the leadership of a notorious character of those days, hit upon the idea of manufacturing strikes. It proved a profitable enterprise.

Working conditions were miserable. The task system of work, which still sends a shiver down the backs of those who knew it at that time, was in full bloom. Under that system, which consisted in the task of making a certain number of garments a day, the employer was in the happy position of not reducing wages. He only kept on piling up coats while wages remained stationary. It developed into the most savage speeding-up system. Frequently one would work hard a full and long-hour week and have only 3 or 4 days' wages to his credit. To remind a New York tailor today of the task system means to remind him of tortures which he is glad to forget.

The workers had many serious grievances and no organization worth speaking of to remedy them. The plotters seized an opportunity when industry was active and called upon the workers for a strike at a time when they were entirely unprepared. The psychology proved sound. Anybody could have thrown a burning match into the powder keg and set it off. The plotters did it. The workers, having ample cause for a strike, responded. They had not been consulted, but that did not matter. There was no effective organization to call the culprits to account.

Whatever organization there was, the conspirators were in a position to control by means of terror. Besides, who would dare raise such issues while the strike was on, and lay himself open to the charge of helping to break the strike in the interests of the employers? For the same reason those who understood and condemned the conspiracy did not dare remain at work. As a matter of fact, such strikes were frequently resorted to as a means of silencing annoying opposition. It served that purpose admirably.

The program of the strike manufacturers was carried out to perfection. Large numbers of people came into the halls and paid initiation fees as told. That established a handsome treasury to start with. A call to the good and generous public for aid brought more funds. When all was collected that the traffic would bear "settlements" were made with sweatshop contractors and the people

"victoriously" sent back to work upon the prestrike conditions. All of the collected funds remained with the clique and sustained them until the next "harvest." That tragic spectacle was repeated several times during that decade. As the workers awoke to the fact that they were decived and sold out, the task of manufacturing strikes became increasingly difficult. Various ruses were resorted to.

The writer recalls one of them. The workers were strongly resisting the calling of a strike though there were good and sufficient reasons to warrant one. Mass meetings were called simultaneously for New York and Brooklyn. Suddenly a "telegram" turned up at the New York meeting with the information that the workers at the Brooklyn meeting had decided to strike. That determined the matter. New York would not scab on Brooklyn. The Brooklyn meeting was then informed of the strike action taken in New York whereupon it adopted a strike resolution. Thus a strike was created officially and "democratically." Their solidarity made the workers an easy prey to the conspirators, whose dastardly crime remained unpunished.

The struggle for a clean and honest organization began shortly after the formation of the United Garment Workers. From that time until the change was finally effected in 1914 there was consistent opposition to the officials' misrule—opposition that refused to be downed.

While the dissatisfaction with the United Garment Workers' administration was general, the active struggle was confined to a small number of persons. The rank and file remained passivley indifferent. With no confidence in the organization they refused to join it; refused to come in and attempt to rescue the organization for the people. A task of this sort is always left to small, militant groups. The masses come when conditions mature for them to act. Pioneering is done only by individuals.

All efforts for an honest organization were frustrated; sometimes by physical force, and at other times by bribing away vulnerable leaders, and by various other means. But the struggle never ceased.

INTEREST IN THE GENERAL LABOR MOVEMENT

During all those trying years, and in spite of our own melancholy experiences with the general labor movement, we were intensely interested in its progress.

The first great struggle which we tried to understand was the universal movement for the 8-hour day, including the bloody tragedy in Chicago in 1886. The first Yiddish pamphlet circulated among the Jewish workers was on the 8-hour day.

In 1892, Homestead fascinated us. We followed that remarkable struggle of the steel workers with rapt attention. Their defeat was as painful to us as if it had been our own.

Hazleton, where striking miners were shot down, was another name in Pennsylvania which came to mean much to us.

In 1894 the magnificent American Railway Union strike won our fullest sympathy. When Eugene V. Debs, its leader, called upon all friends of the striking railway men to wear white ribbons we all decorated our coat lapels with those white little bows.

It might be of interest to note, at this juncture, that the American Railway Union strike was the immediate cause of the establishment of our daily paper, the Abend Blatt. We were provoked by the antagonistic strike reports in the capitalist Yiddish press into hastening our plans for a daily paper. We started it on the solid basis of several hundred dollars in cash and some more in pledges.

We followed carefully the brave struggles of the Western Federation of Miners with their raids, bull pens, and deportations. We became intimately familiar with such names as Cripple Creek and Coeur d'Alene.

The great miners' strikes of 1902 and later years had no more sympathetic and interested followers than those unfortunate clothing workers who were unable to build up an organization for themselves.

And so all along the line.

There has been no event of any importance in the labor movement generally, down to this day, that did not arouse our sympathetic interest.

The labor movement did not wish to know us but we were anxious to know the labor movement.

Our horizon was not limited by our own clothing trades movement nor by the American labor movement generally; it included the labor movements of the world. The British dockers' strike, under the leadership of John Burns, was of no less interest to us than the American miners' strike led by John Mitchell,

or a very interesting capmakers' strike in New York in the early nineties, when the Jewish unions gave the strikers employment by having them make special May Day caps for the 1st of May parade. The "passive strikes" of railroad workers in Austria and the Italian Government's method of breaking a railway strike by calling the strikers to the colors were subjects which we were anxious to understand.

Needless to say that we had a very deep interest in the then illegal and underground labor movement in Russia.

The Russian revolution of 1905 stirred our souls by the vision of the world in motion. Russia in revolution was to us a new birth for all life; a people coming into its own. To us the Russian revolution meant more than freedom for the country of our birth. It must be remembered that we had been worse than stepchildren in Russia. Much as the Russians had suffered at the hands of a cruel ruling class, it was but one part of the misery which was the lot of the subject nationalities. To the Jews particularly Russia was hell on earth. The "pale" was our "country." There we were allowed to live in constant fear of pogroms. We established our homes in this New World and had no thought of returning to the old one. Our interest in Russia's freedom was therefore due entirely to our interest in the people's freedom—in the world's freedom. Every feeling of chauvinism or national selfishness was completely absent. If we did have a more immediate and live interest in the regeneration of Russia than in other countries it was because we knew and understood that country and its people better than we did others. It will, therefore, be easily seen why the Russian revolution found such a powerful response in our hearts.

Judged by accepted standards, the revolution of 1905 was a failure. In reality it was the first lap of the revolution which in 1917 made Russia free.

The unsuccessful revolution of 1905 sent large numbers of young revolutionists into exile. Naturally enough many landed in this country and the clothing industry received its fair quota. They were a most valuable acquisition. Their influence upon our movement was tremendous. They revitalized our forces. Unlike the earlier immigrants those exiles brought with them excellent training in theory and practice, received in the revolutionary movement.

By that time there were a number of nationalities in the clothing industry in New York. Next to the Jews, in point of numbers, came the Italians. Today there are over a score of nationalities in the various clothing markets.

THE COMING OF THE CRISIS

During all those years there was no point of friendly contact between the international officers of the clothing workers' union and the rank and file; no sympathetic understanding on the part of the former for the latter and no desire for such understanding. The two belonged to different worlds. However honest some of those officials may bave been, their mental attitude, the result of a corrupt atmosphere, was such as to render understanding of and cooperation with the membership impossible. Where the officers are unable to understand the members, cooperation is out of the question.

To the Russian immigrant the situation was a reproduction, in miniature, of Russia with her Czaristic bureaucracy and oppressed people. There was no hope without a fundamental change.

In 1910 the clothing industry in Chicago was tied up by a general strike. The condition of the organization was as deplorable as in New York and some of the other cities. The strike was a spontaneous rebellion against industrial oppression. In spite of disorder, chaos, and the open faithlessness of the international officers, the struggle was continued for 5 months. With their remarkable spirit the people would have accomplished wonders if they had been well organized and honestly led.

Let the following incident serve as an illustration of both the cynical irresponsibility of the leaders and the fighting spirit of the betrayed workers: After months of bitter struggle the officers issued relief orders to the amount of $35,000 against an empty treasury. The outraged strikers, learning of the fraud, gathered in large numbers and gave vigorous expression to their burning rage. When the question was then put to the strikers whether they would accept an invitation to surrender, the response was a unanimous "No." They tore up the relief checks and decided to stay out in the face of continued starvation. Some curious strikers were anxious to interview the "leaders", but could not locate them. They had wisely adjourned to another city.

In time the strike developed its own leadership out of the seething chaos, against the wishes and efforts of the official leaders.

That strike laid the foundation for the present magnificent clothing workers' organization in Chicago and brought to the fore some of its ablest leaders of today. One of them is now general president of the Amalgamated Clothing Workers of America.

The strike was lost, with the exception of Hart Schaffner & Marx, with whom an agreement was concluded, However, an organization was won.

During the strike, work was sent from Chicago to New York, and the clothing workers in the eastern metropolis constituted one great army of scabs breaking the strike in the western metropolis. Thousands of workers were touched to the quick by the shameful "prosperity" that came to them. They could not remain calm while consciously stabbing their fellow workers in the back. But they were helpless. There was no organization of any consequence. When an appeal was made by the workers to the official leaders of the skeleton organization they were told to be grateful for having plenty of work and "mind their own business."

In scabbing against struggling workers in another city New York was but following an established custom. The workers in other cities, including Chicago, did exactly the same thing when a strike occurred in New York or anywhere else. But now times were changing and a desire arose for new "customs" to replace the old.

Not only did the officers refuse to stop scabbing in unorganized shops in New York against their own members in Chicago, but workers in "label shops"—"organized" workers—were enlisted in the strikebreaking activities. When the "label workers" refused to do scab work and walked out, they were promptly ordered back by the officials. The more progressive and self-respecting among the "label workers" quit their jobs rather than assassinate their fellow workers on the industrial battlefield.

That Chicago strike experience aroused a large number of enlightened workers and stiffened their determination to begin anew the efforts for organization. It was here that the 1905 spirit exercised its strongest influence. The work was continued with a will and developed remarkable enthusiasm. One result of that agitation was the Tailors' Council, created for the purpose of demanding that the general officers organize the clothing workers.

That agitation led up to the great strike of 1913.

It was in a way the counterpart of the Chicago strike of 1910. The organization was still confined to the front ranks of the workers. But these had succeeded in creating an organization atmosphere. When the strike was called the response was general. From the end of December 1912 until sometime in March 1913 the struggle lasted; all through the bitter cold of winter. It was the usual contest between the empty stomach and the full pocketbook. The greatest force in that strike was desperation. The alternatives were "Work and starve" or "Fight and starve." The choice fell on the latter. Appeals were frankly made to the public to help feed the hungry children. Help came from sister organizations who were of our flesh and blood and understood us well.

The general officers remained loyal to their time-honored policy of oppressing and antagonizing the rank and file. Not only was no help of any kind, financial or otherwise, given to the strikers, but when the contest was at its bitterest the general president ordered the strikers to return to work on a "settlement" on which they had not been consulted. The strikers resented both the terms and the method of the "settlement" and refused to accept it. The Mayor of New York City, accepting the authority of the union's official head, instructed the police not to permit any more picketing. He sent the following letter to Police Commissioner Ralph Waldo, which made picketing impossible:

MARCH 7, 1913.

SIR: I call your attention to the acts of lawlessness and violence which need to be put down by the police at all hazards at once. For many weeks there has been a strike on in the garment-making trade. That strike was settled 1 week ago by employers and the labor unions. As soon as such settlement was reached, Thomas A. Rickert, general president of the United Garment Workers of America, officially declared the strike at an end, and directed all employees to go back to work. This has been attested by Mr. Rickert and the representative of the employers' side, who have appeared before me. The settlement conceded practically all the demands of the employees. They did thereupon go back to work. But lawless persons have continued to hover around the factories and workshops ever since, and they are indulging in acts of lawlessness and violence.

Two places have been shattered by bombs thrown by them, and last evening Mr. Kohn, of the Washington Clothing Co., at 10 Astor Place, was knocked down and grievously battered and wounded by these lawless people after leaving his place of business for the day. These people are not engaged in any strike. They are lawless people in the city, who come forward when there are strikes and disorders and commit all sorts of violence. Let them be dispersed. Let them not linger near these factories and places of business on the score that they are peaceful pickets. They are not pickets. The strike is at an end. They are lawless characters to whom no leniency whatever is due. See that they are not permitted to approach any of these factories and places of business. And let them be arrested if they commit any unlawful act.

Very truly yours,

W. J. GAYNOR, *Mayor.*

The breach between the officers and the members became so wide that it could not be bridged over. The bitter hatred felt by the members for the officers grew into a passion.

Under the circumstances the strike could not yield to the workers all they had hoped for. But it yielded them the most precious of all things—a live organization.

The fact has already been mentioned that in the course of passing years workers from various nationalities joined the Jews in the clothing industry and that the Italians were next to them in numbers In the strike of 1913 all nationalities united to demonstrate their international solidarity. It was then that the Italians and the Lithuanians for the first time occupied a conspicuous position in the labor movement, particularly the Italians, who were greater in number. Both groups of workers made a splendid showing and have since been excellent union members. It was then, too, that it became clear that the clothing industry in New York was no longer an exclusively Jewish industry, as it had been in former years; it had become a cosmopolitan industry.

THE TURNING POINT

The period of 1910–13, particularly the year 1913, was a turning point in the history of the clothing workers' organization. Strikes like those in Chicago and New York occurred in various cities. And each city had the same tale of woe: Treason and selling out. New York, Boston, Baltimore, Cincinnati, St. Louis, Chicago—they all had the same story to tell. In many cases the treachery of the officials produced a deep-rooted prejudice against unionism, the victims considering corruption and treason as inherent in union organization. That was particularly the case in Cincinnati, where a strike in 1913, which began most successfully, was disrupted by a mere telegraphic order from New York to return to work immediately and unconditionally. In such cases it required tremendous efforts and patience to overcome the prejudice and bitter memories.

There was at that time no organic unity among the local unions in the various cities. The logical connection, the general office, through which all local unions are linked together today, was a separator instead of a unifier. To fill that gap, at least for the purposes of the approaching convention at Nashville, Tenn., 1914, a conference was created in New York, which was somewhat similar to the committee of correspondence of the revolutionary colonists.

From that time on the organization was built and strengthened until it was brought to its present powerful position, where all nationalities are working in harmony and cooperation.

The power that sustained the misruling bureaucracy in the United Garment Workers of America was, and still is, the union label overall industry.

Overalls are bought by workers only. Those who are well organized, and desire to do their duty as organized workers, insist on getting union labels upon their working clothes. They do so in the naive belief that the label stands for what they imagine it should stand: good working conditions. But in the overall industry the label represents slavery for the workers—slavery under the employer and slavery under the union official. The dues from the helpless girls in the overall factories and the sale of labels to the employers, are permanently flowing streams of income to sustain the officialdom. The overall workers do the bidding of their two masters blindly. There was never any recognition of fellow membership as between the clothing workers and the overall workers until the latter began to join the ranks of the Amalgamated Clothing Workers.

When we came to "our" convention in Nashville, in the hope of saving the general organization for the membership, we found the overall workers' delegates

under the watchful eye of a representative of the overall manufacturers. They were 100 percent safe for both masters.

When we were refused admittance to the convention and practically read out of the organization we were not dismayed. In former years that would have demoralized and disrupted our ranks. This time we were no longer foreigners, strangers, intruders, though we were called such; we were Americans. In the school of experience by hard knocks we had learned the technique of organization and struggle. If the administration had been aware that we had acquired that precious skill probably they would have been inclined to grant us concessions. In their ignorance they were uncompromising. We held our line intact and carried our case to the American Federation of Labor at its convention in Philadelphia, November 1914. There we were told that "whether right or wrong" we could not get a hearing. That burned all bridges behind us. Then and there we determined that there would be no retreat and that we would proceed and take the consequences, whatever they might be. Our course stands vindicated today before the entire labor movement, as has been maliciously charged, is amply proven by our attitude toward the labor movement, morally and financially.

WHERE AMERICANIZATION MEANS HUMANISM

Where all other attacks fail we are charged with un-Americanism and disloyalty to the country. The quality of the cry of "Americanism" and "loyalty" depends entirely upon the source from which it comes. We do not intend to be apologetic or attempt to meet all brands of "Americanism." We only wish to show what our "Americanism" is, in practice.

There are in the clothing industry today many workers who were born in this country. They must be accepted as Americans under all standards, for they cannot even be deported. This discussion must, therefore, be limited to those who were born in other countries.

When we, the foreign born, came to this country we did so as workers. Every cent that passed into our hand was honestly earned by our hard toil. We received nothing unless we worked unlimited hours; we and our families. We were so thrifty that we lived in dingy, airless, and lightless rooms; large families and lodgers in small apartments. We ate the most modest and the cheapest food. We wore the meanest kind of shoddy. We spent no money at all on even the small comforts and pleasures which help to make life sunnier and brighter. By the most painful sort of abnegation we stretched our meager sweatshop wages for deposits in the savings banks to provide for a rainy day. And while we were thus practicing the teachings of industry and thrift—teachings which we were told were American—we were denounced as cheap labor and reducers of the American standard of living. Were the cheapness of our labor and the lowness of our standard our choice? Did we impose them by force upon the industry? We found them here. "American made" for us. But we, with our toil and our industry and our energy, built up the clothing industry. It is now one of the most important industries in this country. That is entirely due to our labor, the labor of the immigrant workers. It was built with our health and our lives. Many are the premature graves of the sweatshop victims.

We have shown how seriously we have taken the American institutions. We began to Americanize. We learned eagerly all we could about this country. That we sincerely came to love this country for what it meant to us is amply attested by the fact that we established our homes and raised our families here. We became Americans by deliberate choice. Without any compulsion, but by our own free will, we renounced our allegiance to the rulers of the countries of our birth and became American citizens. We did so because of what American history and institutions meant to us. The thrill that we experienced when receiving our citizenship papers cannot be appreciated by those who have not themselves lived through it. The thrill did not come from the piece of paper. It came from the consciousness of becoming a member of a great democracy; from the consciousness of being welcomed into that democracy. To us the Declaration of Independence is not a historical document; it is a living message. To us Abraham Lincoln is more than a national hero; he is a mighty figure who carried the torch of civilization and progress high and far. His struggle still enthuses us by its wonderful human appeal. We do not shout hurrah for politicians and officials, but we have cheers for American freedom. We have felt it a genuine joy in participating in American institutions because of the high idealism and possibilities for greater

democracy that we see in them. That is our Americanism. If there is disloyalty in that we plead guilty.

We submit, however, that this is genuine Americanism because it is genuine humanism. And upon this basis we feel justified, aye, we deem it our duty, to defend those rights and liberties which have won our hearts for this country and because of which we have planted our homes here and made our own adopted country the native country of our children.

And as we grew in our Americanism and learned our rights we understood the great American maxim of "He who will be free, himself must strike the blow." Accordingly, we organized and struggled, until we had built up a strong and powerful organization for our protection. We brought order into the hopelessly chaotic clothing industry, abolished the sweatshop, established a humane standard for the working week and secured for ourselves better wages. Then the cry of un-American "cheap labor" and "reducing the American standard of living" was changed to the cry of un-American "wage profiteering" and "ruining the industry." Our "un-Americanism" today is traced directly back to the raising of our working conditions. We ask: When were we un-American? When we were helpless and downtrodden and unable to take proper care of our children, or today, when we have time for intercourse with our families, thereby giving them a real home atmosphere? Then, when we were compelled to take our children from school and send them into the factory, or today when we are sending them to school properly fed and clothed? Then, when our children grew up in ignorance, or today, when we are helping to make Young America fit to govern this country in the next generation?

OUR ATTITUDE TOWARD THE LABOR MOVEMENT

We raised ourselves by our own bootstraps to the position we now occupy. We have achieved our success because of our deliverance from faithless leaders and our unshakable confidence in our cause and in ourselves.

The rest of the labor movement, with very few exceptions, has treated us like outcasts, obstructing our work and injuring us in every possible way. Yet, we have entertained no ill feeling toward our sister organizations, our sense of solidarity of interests being greater than our feeling of injury. The labor movement has not understood us. Our great success is now bringing many of them to an understanding.

The fact that we failed for a quarter of a century within the official labor movement and succeeded and triumphed within 5 years outside of it should be food for much thought.

In 1913 we were entirely unorganized. Today we are fully organized and have a voice in industrial legislation. We have added 200,000 men and women to the army of organized workers.

In 1913 our hands were outstretched for alms. In 1919 we gave from our own treasury $100,000 for the support of a strike of other workers.

We have humanized and vitalized our industry. We have raised hundreds of thousands of souls from social degradation to the high level of human dignity.

In 1913 we asked for charity; today we demand rights.

These are our credentials to the labor movement of the world. Though gravely wronged by the general labor movement we stand ready to give it, in our common struggle, the full benefit of our power and success.

In our own organization we have one cosmopolitan army of workers who belong to one another. In the labor movement generally we see only workers, fellow workers, sisters and brothers, united for the same cause.

Form 125-31. CONFIDENTIAL GOVERNMENT REPORT File No. ____

MANUFACTURED UNDER MEN'S CLOTHING CODE AUTHORITY
N. R. A. member ABC. 666666
[Insignia] U. S.
We Do Our Part

DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

WASHINGTON

IN COOPERATION WITH THE

MEN'S CLOTHING CODE AUTHORITY

ESTABLISHED BY THE CODE OF FAIR COMPETITION FOR THE MEN'S CLOTHING INDUSTRY AND

THE NATIONAL RECOVERY ADMINISTRATION

(Check branch of industry)

Ready-to-wear
Tailor to trade or custom tailor
Men's separate trousers
Single knee pants
Summer wash suits

REPORT OF NUMBER OF GARMENTS CUT FOR 4 WEEKS ENDING _____

In accordance with sections 3a and 6a of the National Industrial Recovery Act, you are requested and required to fill out the following schedule.

Replies will be held in strict confidence and no one but sworn Government employees, and the Executive Director of the Men's Clothing Code Authority, or his duly authorized representatives, will be permitted to examine the individual returns and no publication of the summary statistics which may be compiled from these and other similar reports will be made which would disclose any of the facts or figures in your report.

Men's clothing	Number of garments cut for week ending—			
Kind of garment				
Suits wholly or partly of wool				
Suits of cotton, mohair, linen, etc.				
Separate trousers wholly or partly of wool				
Separate trousers of cotton, mohair, linen, etc.				
Overcoats and topcoats				
Odd coats				

Boys' clothing	Number of garments cut for week ending—			
Kind of garment				
Suits wholly or partly of wool				
Suits of cotton, mohair, linen, etc.				
Separate pants wholly or partly of wool				
Separate pants of cotton, mohair, linen, etc.				
Overcoats				
Mackinaws, reefers, and light coats				

We hereby certify that this is a correct statement of number of garments cut during each of the 4 weeks stated.

_____
(Firm name)

_____
(Address)

_____
(Authorized signature)

[Blue eagle insignia.]

Established by the National Recovery Administration to administer and enforce the Code of Fair Competition for the Men's Clothing Industry, approved by President Franklin D. Roosevelt, August 26, 1933.

MEN'S CLOTHING CODE AUTHORITY,
New York, 15: 2–35.

In reply refer to VB 1/21/35.

GENTLEMEN: The next pay-roll report includes the pay roll for the 4 weeks beginning January 21 and ending February 16, 1935.

You will continue to send these reports to the United States Bureau of Labor Statistics, Washington, D. C., using the franked envelops or franked labels (no postage required) enclosed with the pay-roll forms. These reports, after being tabulated in Washington, will be forwarded by the Bureau of Labor Statistics to the Men's Clothing Code Authority.

This report is to be filled in in the same way as the last report, yellow sheets for office employees and white sheets for manufacturing and nonmanufacturing employees.

This report should be mailed within 10 days after the close of the period for which the report is made. It should therefore reach the United States Bureau of Labor Statistics not later than February 28, 1935. If it is not received at the Bureau of Labor Statistics by February 28, you will be reported delinquent by that Bureau.

Your continued cooperation is requested in forwarding these pay-roll reports to the United States Bureau of Labor Statistics promptly and completely.

Very truly yours,

MEN'S CLOTHING CODE AUTHORITY,
By HERWITZ, *Comptroller.*

(Form of envelop)

U. S. DEPARTMENT OF LABOR
Bureau of Labor Statistics
Washington, D. C.

Penalty for Private Use to Avoid Payment of Postage, $300.

Official Business

COMMISSIONER OF LABOR STATISTICS,
DEPARTMENT OF LABOR,
WASHINGTON, D. C.

27

This envelop can be used only for reply to Official Communications. The Address MUST NOT be changed.

Form 46—A4

SUMMARY OF PAY ROLL REPORT

(United States Department of Labor, Bureau of Labor Statistics, Washington, in Cooperation With the Men's Clothing Code Authority, Established by the Code of Fair Competition for the Men's Clothing Industry and the National Recovery Administration)

Four-week period ending_____

Firm name_____

Address_____

	Week ending_____			Week ending_____			Week ending_____			Week ending_____		
	Number of employees	Total hours worked	Total earnings	Number of employees	Total hours worked	Total earnings	Number of employees	Total hours worked	Total earnings	Number of employees	Total hours worked	Total earnings
Factory												
Office												

Location of establishment: _____
(Please supply separate report for each establishment.)

Have you made any changes in rates of wages since last report_____
(Yes or No.)

If so, give date_____. Was it an increase?_____ or decrease?_____

Percent of change_____. Number of employees affected_____.

The wage-rate changes desired are general changes and not individual changes for length of service or unusual merit.

Send to Bureau of Labor Statistics, Washington, D. C.

Form 46—4 [This form to be used for factory employees only] File No. —

(Send to Bureau of Labor Statistics, Washington, D. C.)

U. S. Department of Labor, Bureau of Labor Statistics, Washington, in cooperation with the Men's Clothing Code Authority, established by the Code of Fair Competition for the Men's Clothing Industry, and the National Recovery Administration—Pay roll report

(Men's Clothing Code Authority label)

Check branch of industry: Ready-to-wear ——; tailor to trade or custom tailor ——; men's separate trousers ——; single knee pants ——; summer wash suits ——.

Check one: Manufacturer ——; contractor ——.

Firm name_____
(Print or type name plainly)

Address_____
(Street) (City) (State)

Shop or department_____
(Show kind of shop or department)

Four-week period ending_____

Location of establishment_____
(Please supply separate report for each establishment)

In accordance with section 3a of the National Industrial Recovery Act and article 8 of the Code of Fair Competition for the Men's Clothing Industry, you are requested and required to fill out the following schedule.

The data below will be held in confidence except insofar as they may be used solely by the code authority to effectuate the purposes of the Code of Fair Competition for the Men's Clothing Industry, and any additions or amendments thereto, and no publication of the summary statistics which may be compiled from these and other similar reports will be made either by the Bureau of Labor Statistics or the code authority which would disclose any of the facts or figures in your report.

NOTE.—Include all manufacturing employees; skilled and unskilled workers of all classes; also so-called "nonmanufacturing" employees such as shop-repair crews, engineers, electricians, foremen, stock clerks, shipping clerks, truck drivers, porters and watchmen. Omit superintendents, etc., engaged solely in supervisory work.

Pay-roll number or name	Sex, male or female	Kind of work	Week ending —		Week ending —		Week ending —		Week ending —	
			Hours worked	Earnings	Hours worked	Earnings	Hours worked	Earnings	Hours worked	Earnings
Total										

The foregoing is a true and accurate report of occupation, hours, and earnings of each worker.

(Firm name)_____

_____ (Address)_____
(Authorized signature)

Form 47—4 [This form to be used for office employees only] File no. ——

(Send to Bureau of Labor Statistics, Washington, D. C.)

United States Department of Labor, Bureau of Labor Statistics, Washington, in cooperation with the Men's Clothing Code Authority, established by the Code of Fair Competition for the Men's Clothing Industry and the National Recovery Administration—pay-roll report

Check branch of industry: Ready to wear ——; Tailor to trade or custom tailor ——; Men's separate trousers ——; Single knee pants ——; Summer wash suits ——.

Check one: Manufacturer ——, Contractor ——.

(Men's Clothing Code Authority label)

Firm name_____
(Print or type name plainly)

Address_____
(Street) (City) (State)

Shop or department_____
(Show kind of shop or department)

Four-week period ending_____

Location of establishment_____
(Please supply separate report for each establishment)

In accordance with section 3a of the National Industrial Recovery Act and article 8 of the Code of Fair Competition for the Men's Clothing Industry, you are requested and required to fill out the following schedule.

The data below will be held in confidence except insofar as they may be used solely by the code authority to effectuate the purposes of the Code of Fair Competition for the Men's Clothing Industry, and any additions or amendments thereto, and no publication of the summary statistics which may be compiled

from these and other similar reports will be made either by the Bureau of Labor Statistics or the code authority which would disclose any of the facts or figures in your report.

NOTE.—Include clerks, stenographers, bookkeepers, and all other office workers. Omit figures covering outside salesmen, executives, or other responsible administrative employees. Do not include here persons doing clerical work in factory, or shop-repair crews, engineers, electricians, foremen, stock clerks, shipping, clerks, truck drivers, porters, or watchmen. Such persons should be reported under "factory employees."

Pay roll number or name	Sex, male or female	Kind of work	Week ending ——		Week ending ——		Week ending ——		Week ending ——	
			Hours worked	Earnings	Hours worked	Earnings	Hours worked	Earnings	Hours worked	Earnings
Total										

The foregoing is a true and accurate report of occupation, hours, and earnings of each worker.

(Firm name)_____

_____ (Address)_____

(Authorized signature)

[The New York Sun, Wednesday, Mar. 13, 1935]

AN N. R. A. MASTERPIECE

(Editorial)

A large and handsome pamphlet, issued a week or two ago by the Research and Planning Division of the National Recovery Administration, bears the title "Report on the Operation of the National Recovery Act." Its statistical tables may look formidable to the wayfaring man, but their significance is vividly brought home to him in graphic charts. In the body of the report special attention is called to chart 17.

Even more startling is the light placed upon the lot of those receiving dividends and interest by the historical comparison pictured on chart 17 (p. 27). Note that although pay rolls in December 1934 were only about 60 percent of the total in 1926, dividends and interest were 150 percent of their total in 1926. In short, the income enjoyed by those who received dividends and interest was 50 percent higher than in 1926, even though the national income has declined nearly 40 percent since that date and volume of production has declined by one-third.

"Startling" is certainly not too strong a word. Of the 120,000,000 inhabitants of the United States, it is safe to say that not a single one suspected the existence of this state of things; and whoever has taken the slightest interest in the subject is sure to have thought that income from corporation securities is now, and has long been far less than in 1926. Nor will anybody's astonishment be lessened when he looks at the chart itself; for it tells us not only that dividends and interest are now greater than in 1926, but that they have been greater than in 1926 in every single year throughout the depression. For example, taking dividends alone, it appears from the chart that they exceeded the figure for 1926 by about 116 percent in 1931 and about 42 percent in 1932. This information will certainly make the ordinary business man stare and gasp.

But there is one place where the astonishment will be even greater than it will be in business circles. That place is the Bureau of Internal Revenue at Washington. That Bureau issues an annual publication entitled "Statistics of Income." The latest volume issued is for the year 1932, and it gives the total of dividends for that year as $3,886,000,000 and the total for 1926 as $5,945,000,000. This is a decrease of 35 percent, whereas the N. R. A. chart shows an increase of 42 percent. And in every year of the depression the Internal Revenue Bureau's figures contrast

in this same way with those of the N. R. A. report's total of dividends is more than twice as great as the Internal Revenue Bureau's total.

How can we explain this amazing contradiction? Naturally the first thing one does is to inquire into the method by which the N. R. A. figures were arrived at. Upon that question chart 17 gives no information. But fortunately a note appended to the statistical table upon which the chart is based does state the source from which the dividend figures are derived; and, incredible as it may seem, they are not the result of any research whatsoever, but are simply copied from one of the publications of the Standard Statistics Co. And, turning to that publication, we find it, too, making no claim of having done any research in the matter, but giving as the source of its figures the New York Journal of Commerce. By what method the figures were obtained from the files of that newspaper we are not informed; but, indeed, they are presented as a mere tid-bit of information having no connection or relation with the general purposes of the publication.

Thus we see that there is not the faintest reason for supposing that all the world has been wrong about the state of corporation income in the depression, and not the faintest reason for paying any attention whatsoever to the N. R. A. report's statements on the subject. It would be easy to pile up damaging particulars which would show up more fully the grossness of the error, but it is hardly worthwhile to do so. For the real gravity of the matter lies not in the figures but in the men behind the figures.

It requires an effort of the imagination to conceive of a great Government research organization publishing and drawing special attention to a flagrantly false assertion upon one of the broadest issues of the time, an assertion whose falsity is obvious on its face, and sponsored without the slightest inquiry. If some one person—whether the Director himself or a subordinate—was silly enough to think a stray item in a business publication sufficient ground for putting the Federal Government's endorsement upon an obviously preposterous statement, one might surely have thought that among the scores of officials paid as experts by the N. R. A. Research Division there would have been someone to choke off the absurdity before it went to the public. Above all, it is appalling to think that the head of the Research and Planning Division, who naturally acts as economic adviser to the N. R. A. itself, should have made himself responsible for a blunder so montrous and so ridiculous.

NATIONAL RECOVERY ADMINISTRATION RELEASE NO. 10560

(Release Monday a. m., Mar. 18, 1935)

Leon Henderson, Director of Research and Planning Division of N. R. A.' today issued the following statement:

I sincerely regret that misunderstandings have arisen because the Research and Planning Division in a recent report charted the widely accepted Journal of Commerce series of dividends and interest payments.

In order to compare the course of dividends and interest payments over a period of years, we used the oldest available record of such payments, one continuously published by Standard Statistics Co. and based on data collected for more than 20 years by the Journal of Commerce. We had the same degree of confidence in the figures as statisticians, business men, and financial organizations who widely use all the material published by Standard Statistics Co.

The report in which the figures and comparisons with 1926 appeared was originally prepared under considerable pressure of time for use within the Government. Later, because it brought together most of the recognized statistical series on economic conditions, it was made available for limited distribution. The dividend and interest series shows actual substantial proportions. If its use is decidedly limited, as is indicated by the statement published by the Journal of Commerce, the Research and Planning Division will not only refrain from further employment of it except within narrow limits but will endeavor to repair any damage done by its circulation in a Government report.

In preparing the material for the report, every effort was made, as indicated, to use only the most complete and most widely accepted information. The limited usefulness of available data in so important a field as dividends and interest payments clearly emphasizes the inadequacy of current statistical information.

[Daily News Record, June 22, 1934]

DRECHSLER TELLS HOW RIVAL GROUP BARRED UNION FIRMS

CLOTHING MANUFACTURERS' ASSOCIATION, HOWEVER, FOLLOWED SPIRIT OF N. R. A. IN OFFERING MEMBERSHIP TO ALL IN INDUSTRY, WHETHER OR NOT THEY HAD COLLECTIVE AGREEMENTS

(By David Drechsler, secretary and counsel Clothing Manufacturers Association of U. S. A.)

(Mr. Drechsler, discussing the N. R. A. on its anniversary, cites association development under the spur of the N. R. A. in his second installment herewith. The third, to appear in an early issue, discusses prospects for future transition—Editor.)

A review of the achievements of our association is in order now for the purpose of demonstrating clearly the past inherent vigor which our officers deem still available for future constructive effort.

Being aware of the shape that things were assuming in April of 1933, several of our larger manufacturing firms in the Chicago, New York, Philadelphia, and Rochester markets arranged for a meeting to be held in Washington, on May 22, for the purpose of creating a national association which was to facilitate the entry of the clothing industry into the plans for rehabilitation known to be in the offing.

At the meeting which resulted, the Clothing Manufacturers Association of the U. S. A. was organized, officers were elected, and a board of directors created as a governing body. For purposes of facility and convenience an executive committee was appointed from the membership of the board of directors, with full power to act for and to bind the association.

ALL IN INDUSTRY INVITED TO JOIN

At the series of successive meetings held thereafter, bylaws were adopted, articles of incorporation were submitted to and filed by the recorder of deeds of the District of Columbia, and a general and open invitation by letter and by newspaper advertisement to join the association was addressed to each member of the clothing industry in the United States.

Beside the actual clothing manufacturer, the roster of the association included contractors, market associations, and members of affiliate industries. The total membership soon comprised some 75 percent of the entire industry. Efforts were early made to coordinate the association's program with the work of such related groups as the National Retail Association and the woolen group. The conferences resultant therefrom served to disclose valuable information which was subsequently used in connection with the association's big job; namely, the drafting of a code of fair competition for submission to General Johnson.

The National Industrial Recovery Act was then under consideration by Congress. Your officers appeared and made known to the members of Congress the problems as they affected the clothing industry through our association, made some valuable contributions which were incorporated in the final form of the act approved by the President on June 16.

HIRED STAFF OF STATISTICAL EXPERTS

Immediately after the enactment of the recovery act, a competent staff of statistical experts was hired for the purpose of adducing factual information from which conclusions as to hours and wages were to be drawn. The association then set out to write a code of fair competition for clothing. It seems that while that was going on a rival association was making much the same efforts, with the ultimate purpose of supporting its submission as against ours at the scheduled hearing before the deputy administrator, Dr. Lindsay Rogers.

Valiant efforts were made to induce the rival Industrial Recovery Association to combine with our own group, but all such negotiations failed. The controversy that was thus precipitated will long be remembered in American clothing history as the fight which determined the future progressive attitude toward labor by the industry as a whole.

For convenience hereafter, the Clothing Manufacturers Association of the U. S. A. will be referred to as the Northern Association and the Industrial Recovery Association of Clothing Manufacturers as the Southern Association, though both of these associations number their membership in the one case in the South,

and in the other in the North. Our appellation does, however, describe the location of the major part of each group.

Detailed description of the various points of contention are significant in this report because of the light thereby cast on the industrial character of the Northern group, our own, whose interests are thus shown to be precisely those required for the new type of economic order outlined above.

In addition to the common and perfectly normal desire for a fair profit, the sense of obligation toward labor and the public welfare are definitely manifested. Moreover, the virility with which the espoused cause of the Northern group was pursued does, as was indicated before, bode well for what can be done by us in the future.

TRIED TO INTERPRET SECTION 7A

On July 26 and 27, 1933, at the hearings before Dr. Rogers, it appeared first that the reference to the famous section 7 (a) of the NIRA in the Southern group's proposed code, in addition to quoting verbatim the section as did the Northern group's code, added interpretive matter which amounted to amending the congressional statement, an assumption of power clearly unwarranted and accordingly disallowed by the deputy administrator.

The next question which developed at the hearing was the validity of a claim made by the Southern group for an independent code of its own. It could not, however, defend any distinguishing grounds between the type of activity engaged in by its members and that of ours. Their contention that they were the mass producers and their opponents the higher-priced artisans, the artists, was, of course, poorly conceived and naturally disregarded. The Southern contentions that they were a geographical division, that they were all inside shops and we were all contractor shops likewise fell down after analysis.

If distinction there was, it could only be found in the fact that all the Northern association members, more or less, had labor agreements with the Amalgamated Clothing Workers Union and that the Southern group was chiefly nonunion. Such a distinction could not support the demand for a division of the industry into two parts with separate codes for each.

Under the NIRA, section 3 (a), it was specifically stated that "no inequitable restrictions be placed on membership in any representative group" submitting a code. The Southern Association clearly violated this provision in their definite refusal to accept union firms into their association.

This, it appears was based on one of their bylaws denying membership to a firm having a collective agreement. We clearly demonstrated at the various preliminary conferences that we were not only willing to combine with the Southern group but were even willing to discard our own title, bylaws, and articles of incorporation, and adopt theirs. It is history that we were refused.

[Daily News Record, June 25, 1934]

FUTURE OF ASSOCIATION UNDER N. R. A. ENVISIONED BY DRECHSLER

INFORMATION SERVICE, LABOR DEPARTMENT, SALES PROMOTION BUREAU, GRADING OF PRODUCTS, COOPERATIVE INSURANCE, AND CREDIT FACILITIES SEEN AS AMONG FIELDS TO BE DEVELOPED

(By David Drechsler, Secretary and Counsel, Clothing Manufacturers Association, of U. S. A.)

(Mr. Drechsler's third and last article visions future possibilities for association work under the N. R. A.—Editor.)

Perhaps the most stubborn part of the code controversy centered around the wage protection we sought to provide for workers in the skilled and semiskilled higher paid classes. Endless conferences and attempts at an adjustment of this problem were unavailing. On this issue, the Southern group was unyielding, until decided against by the Administrator. Since then the Southern manufacturers have supported the code, and this particular provision along with the rest of our industry.

The last great point of dispute arose over the question of representation and make-up of the proposed code authority. The Southern group asked for 5 members representing their group, 5 ours, and labor, consumer, and Administration representation. Our group, for tactical reasons, contended that the southern association was entitled to no representation at all, the theory being that an

administrative body, and the authority was that, could not execute effectively any policies to which it did not have unanimous adherence. Lord Bryce and Woodrow Wilson were the authorities for the contention.

Suffice it that the compromise which resulted was decided in favor of the Northern (our) association. The southern group was given representation, but such representatives consisted of 5 members as against the northern 10, and moreover, the 5 were to be chosen by the president of the association and were not actually required to be members of the Industrial Recovery Association; it was sufficient only that these 5 were not members of our association. The 15 were permitted to select 2 more members. Labor was given 5 members and the Administration 1.

POSSIBLE FIELDS FOR ASSOCIATION

In Bulletin No. 7, General Johnson stated that, "It is the policy of the National Recovery Administration to build up and strengthen trade association throughout all commerce and industry." My purpose now is to describe briefly some of the possible fields of endeavor open to the Clothing Manufacturers Association as an actively functioning association of the present and future.

It is my belief that we must adopt a policy of constructive work. Failure to do so would be to ignore the patent demands of the new economic life. That the work to be done must be done by someone else if not by us, or else there are the alternatives of chaos, and regimentation, appears obvious.

Under the present code system of industrial government, there should be a regular agency for the presentation of the nonofficial point of view to the code, a quasi-governmental body. The peculiar problems that affect small men, big men, this or that group or type of work, can be more efficiently handled and developed by a trade association than by the single individual who may have neither the time. money, nor ability to make a comprehensive study and suggestion to the code authority.

For the code authority to operate to the greatest advantage for the industry, there should be provided some body to expound on a particular point of view, both for and against, before the code authority. Only in such a way can the industry be assured of an intensive study, being the basis for the code authority's particular decision.

Moreover, there are any number of occasions when representations before other administrative and legislative bodies of the Nation and the State would be of incalculable value to the industry.

The distribution of trade information to the members, with the possible publication of a journal, would prove an activity worthy of the association's consideration.

There is considerable room for measures designed to protect trade names and to prevent pirating of designs. The Fashion Originators Guild in New York has done notable work of this kind in the dress industry.

The creation of a capable labor department designed to promote good relationship between management and labor presents a type of work invaluable in its effects. The experience of local trade associations in our own industry indicates that rather emphatically.

A centralized bureau of sales promotion could render clothing excellent service. Marketing surveys, cooperative avertising, etc., are some of the possible activities along this line. Though it is true that our products are mainly in the necessity class, yet there are nevertheless competing products which tend to divert some of our sales. Seasonality is an ever-present problem in our industry. Education of the public could be a means of allaying both of these bad conditions.

Standardization and grading of products, freight-traffic negotiations, research into new methods and technology, study of technical, managerial, and market problems are more questions deserving of thought and action.

The promotion of harmonious relationships with interrelated industries is a vast subject for constructive consideration. Perhaps some form of commerical arbitration, perhaps fostering of negotiation, perhaps something else. The field presents immense possibilities.

COOPERATIVE INSURANCE

Cooperative insurance and credit bureaus promotion of cost accounting are more subjects which are properly within the scope of a trade association.

Unemployment insurance, once a sociological problem only, is now very definitely an industrial problem worthy of our thought.

Examination and formulation of codes of fair practice and ethics privately—in addition to those of the code, or for submission to and approval of the code authority for incorporation into the code; interchange of statistics on production, sales, shipments, stock on hand, etc.; joint purchasing are more types of activity that could well be examined.

It is my earnest hope and desire that the program adopted by our association for the ensuing year will at its conclusion prove definitely the desirability of renewing our membership agreements for an indefinite time into the future. And by our demeanor in the clothing industry and the similar conduct of others in other American industries the United States will again teach the world a lesson in liberty.

In 1776 it was a lesson in political liberty. In 1866 it was a lesson in social liberty. In 1934 it can be a lesson in economic liberty.

In the United States District Court for the District of Maryland. *L. Greif & Bro. Inc., A Body Corporate, Plaintiff*, v. *Homer S. Cummings, Attorney General of the United States et al, Defendants.* In Equity No. 2275. Baltimore, Md., July 23, 1934

OPINION (ORAL)

Coleman, district judge: The court finds no basis for the motion of the United States attorney that the proceedings be dismissed for want of jurisdiction, and therefore that motion is overruled. It seems to me that in an act of this kind, where the district attorneys throughout the country are expressly charged with the duty of enforcing the act, that they cannot escape the contention, at least, that they are likely to be required by their superiors in Washington to assume the responsibilities that may flow from the act, and in the absence of some very definite provision in the law which does not appear, that they do not have anything to do with it, in matter of defense, although they are charged with the duty of acting affirmatively, it seems to me only logical to hold that the United States attorney in this case is a proper party, and, therefore, I find that Judge Chesnut's action was entirely sound, in at least granting the order, the question as to who shall come under it to be later determined. I now find that the United States attorney does come properly within the intent of the act as one of the Government officials who may be properly served in a proper case.

The other motions I will grant with respect to the various individuals who have not been served and also with respect to the one who has been served. I do not think, as a matter of fact, that it should make much difference whether he is included as a defendant or not. I refer to Mr. Williams, because he is only one of a number of members of an advisory board.

I am satisfied that there is sufficient warrant for retaining Mr. Lebow in the case, and that motion will be dismissed.

The order of Judge Chestnut will be affirmed and reissued, and the court makes these findings of fact: That there is danger of irreparable injury being caused to the plaintiff by reason of the threatened removal of the Blue Eagle and also of the N. R. A. label, and the resultant inability of the plaintiff to complete manufacture and delivery of a large quantity of his garments now on hand, which have been ordered from it, and which it has contracted to deliver in the immediate future and which are now in the process of manufacture and delivery, and by reason of possible criminal or civil action taken against it, or both, before the hearing of the application for a temporary injunction can be had.

And the court further finds that on the evidence submitted, the complainant has in good faith exhausted all means that have been, or now are, available to it from administrative boards or bodies, in order to obtain, within any reasonable length of time, a stay or a modification of the ruling here complained of.

The court further finds that according to the administrative order X–38, dated May 28, 1934, placed in evidence, and bearing the signature of the Administrator for Industrial Recovery, General Johnson, the bodies or persons to which the complainant alleges it resorted for relief, and which is not contradicted by the evidence, do have power to do the things here complained of; namely, to deprive the complainant of the right to use labels or the Blue Eagle insignia, or both.

An order will be signed in conformity with the findings of fact.

The court cannot refrain, in conclusion, from making this statement: That it is not impressed with the attitude of the Government in a matter of this kind. The court has before it what might be called a surfeit of counsel representing

various branches or agencies of this particular department of the Government. It would seem to the court that the Government authorities would welcome some opportunity to test their authority. If they do not have the authority claimed, then it is time that they be told that they have not got it. And I want to make it perfectly clear that the Government authorities are not going to get from this court any encouragement in the sort of tactics which have been too prevalent, I think, today. By that I am not referring to the fact that they have asserted certain questions of jurisdiction. That has been their right. I do not think they had any merit in them, but that is not what I am now referring to specifically. I am referring to the general attitude on the part of the Government, which I think is nothing short of an evasion of their full responsibility.

The National Recovery Act expressly provides that the United States attorneys are the ones that the President and his subordinates shall look to for the administration of the act. That is expressly stated in the law. It necessarily follows that if no other provision is made for attending to the business of the Government when an attack is made upon the law, those same agents are the ones that the Government will look to. And the Government has been looking to them. It is a matter of common knowledge to anyone who reads the newspapers that the Government has been looking to them.

There is no provision in the law, unfortunately, setting up definite machinery. It is all vague—too vague—to accomplish efficient operation, apparently, because we have here an example of a diligent complainant that has not known exactly where and how to proceed. I am satisfied that from the evidence that the efforts were made in good faith. Complainant acted upon statements made to it by those ostensibly in authority. There was nothing else for it to do. And I am satisfied it had a right to resort to the court.

I am not now attempting to pass upon the validity or invalidity of the law. That is a question which can only be determined when the whole matter is fully presented and both sides are given an opportunity to be heard. But, as I said at the outset, I do not think the court can refrain from deprecating the attitude that has been displayed today on the part of various representatives of the Government instead of an attitude of willingness to meet these issues which are new—and are all blazing a new trail under these laws, which means that there ought to be an attitude on the part of the Government, if business is to be fostered, to meet business fairly and squarely and have the issues threshed out, instead of resorting to refined and highly technical questions and methods, because when the very people charged with the administration of this law take the stand, as has Mr. Hoffpauir, and by evasive answers seek to give the impression to the court that no one but the President and the Administrator have any power to do certain things—things which complainant fears may be done—well, that does not favorably impress the court, because the documentary evidence is directly contradictory to that.

Now it is not the function of this court to encourage business or to enter into the economic field—that is not a concern of this court, and it is not a concern of this court, as a practical matter, whether this law is good or bad, but it is a concern of this court to see that when litigation arises, that it is pursued not only with diligence but with fair play. And I do not think the Government has approached this sort of litigation in the spirit that business is entitled to, particularly when the Government's main ground for attempting to resist the contentions of the plaintiff, is that the business involved is Nation-wide, and that what is done here in Baltimore by this company and its other plants affects business as a whole.

That may be true. I am not passing upon that. That is another matter, but pettifogging must be put aside. When this case reaches the final state of hearing on the merits, while I have no disposition to restrict the time that you may want for testimony or argument, provided the testimony and argument are pertinent to the issues, I do hope that you will cooperate with the court in getting down to the fundamental questions. I have emphasized this, because I was given to understand last Friday that the Government—and I refer now to the United States attorney here as representing the Government—was entirely pleased with the suggestion that if the matter could be postponed until September that would be entirely satisfactory. Now, this morning I am met with a large number of highly technical, evasive, theoretical points, which I am satisfied must have been raised before Judge Chestnut, and we have had most elaborate arguments here now for the last half or two-thirds of the day, going over questions which should have been and could have been, if they were not, presented to Judge Chestnut.

In conclusion, I want to say that I have never had the feeling from the beginning that this was a question involving a labor dispute in the sense that that phrase is used in the recent amendment to the United States Code, regulating the power of the district courts to issue restraining orders; but in order to avoid that technical question; in order to get down to the meat of the controversy as promptly as possible, I have had this hearing this morning to satisfy myself, and to make findings of fact which would comply with that more technical provision, assuming, but not deciding, that it does, in fact, apply.

Now, gentlemen, I am prepared to sign a restraining order; and I will try to give as early a date for the hearing of the case on the merits as is possible.

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

WEDNESDAY, MARCH 27, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, Barkley, Connally, Costigan, Byrd, Black, Couzens, La Follette.

The CHAIRMAN. The committee will come to order. Is Mr. Vincent here?

Mr. VINCENT. Yes, sir.

STATEMENT OF MERLE D. VINCENT, DEPUTY ADMINISTRATOR, NATIONAL RECOVERY ADMINISTRATION

(The witness was duly sworn by the chairman and testified as follows:)

The CHAIRMAN. You are the deputy administrator of the Men's Clothing Code?

Mr. VINCENT. Yes, Senator.

The CHAIRMAN. I may say that we will have to move along a little faster than we have been going, so I am going to ask all of the parties who appear before the committee to try to deal as briefly as they can and to go right at the meat in the coconut.

Now, Mr. Vincent, you will proceed. You have heard the testimony here of Mr. Curlee?

Mr. VINCENT. Yes, sir.

The CHAIRMAN. Will you give to the committee your reaction to that and facts with reference to the administration of this code?

Mr. VINCENT. Our desire, Senator, is to give the committee such information as we can respecting the organization of the code authority and the administration of it. Any incidental facts that the committee desires to know and which we can furnish we shall be very happy, of course, to supply.

Senator KING. Before you proceed, may I ask, have you Mr. Howard's report here?

Mr. VINCENT. I do not have it.

Senator KING. I have asked for that and it has not been produced. Will you produce it?

Mr. VINCENT. I am unable to. We had a copy and I think Mr. Harriman, at Senator Nye's request, delivered it to him. In fact, I know he did because I was with him at the time.

The CHAIRMAN. So that you will have these facts and can answer them, let me say this, that Senator Nye sent to the committee the other day, and I presume that was the Howard report, certain alleged criticisms with reference to the operation of this Men's Clothing Code, and we turned this over to our experts of the committee for their investigation of this report and to give us a report. I have the report from them here, and I should like to read it. It is not long. Then you can make your comments with reference to it.

Senator KING. That is a summary, is it not?

The CHAIRMAN. Yes.

Senator KING. Not the report itself?

The CHAIRMAN. No; this is a summary.

Senator KING. Have you the report there?

The CHAIRMAN. Yes. This memorandum states [reading:]

With respect to the Howard report on the Code for Men's Clothing Industry, submitted to the chairman by Senator Nye, with letter of March 23, 1935.

This report, made by J. C. Howard, special agent for the N. R. A. to the National Recovery Administration, deals with a complaint made by the executive director of the Industrial Recovery Association of Clothing Manufacturers, Martin E. Popkin, with respect to the interpretation and enforcement of article II (b) of the Code for the Men's Clothing Industry. It is specifically stated in this report that a further investigation may show coercion on the part of the Clothing Manufacturers Association, and the Amalgamated Clothing Workers and the code authority of the employees of clothing manufacturers belonging to the Industrial Recovery Association.

In a memorandum prepared by Special Agent Howard, on July 11, 1934, the statement is made that a form letter signed by George L. Bell, executive director of the Men's Clothing Code Authority, dated July 5, 1934, had been printed prior to that time, and mailed to the various cities where Greif plants are located, for distribution July 5, the date of the Greif hearing before N. R. A. in Washington, D. C.

It is further stated in the letter addressed to Special Agent Howard by M. E. Popkin, executive director of the Industrial Recovery Association of Clothing Manufacturers, under date of July 7, 1934, that raids were made by so-called "investigators" of the Men's Clothing Code Authority on the plants of L. Greif & Bro., Inc., at the very time their case was being heard before the Compliance Division of the N. R. A., at Washington. The charge is made that these raids were made by a group of men who attempted to force entrance to the plants and demanded the right to address employees, and that in one instance, it was necessary to close the plant, because a riot occurred. It is stated that where the so-called "inspectors" were admitted, they addressed the employees in an entirely improper manner, and in other cases where they were not admitted, they demanded that employees present themselves for examination at hotels in the various towns. That these so-called "inspectors" handed out letters on the stationery of the code authority, stating that they were empowered to act, and quoting various authorities. In one case, the letter used was an abstract from the Recovery Act, and bore the signature of the President of the United States, it is claimed.

On July 9, 1934, Special Agent Howard wrote Mr. Byers H. Gitchell, administration member of the code authority for this industry at 1440 Broadway, New York, advising him of the complaint of these raids, and asking for information as to what persons were sent to conduct said raids and under what instructions they had been sent.

In a report dated July 14, 1934, from Special Agent Howard to Mr. Robert K. Straus, special assistant to General Johnson, Administrator, the statement is made that the special agent had been directed by the administration member of the code authority to Mr. Bell, the executive director of the code authority, and that he had called on said Bell, and did not receive from him sufficient data to either prove or disprove the charges which had been made. That Mr. Bell refused to permit an inspection of his records without a request from Mr. Straus, and qualified this by saying he could not answer this question definitely at that time.

There is nothing further in this file bearing on the alleged raids, but there is a letter dated September 17, 1934, over the signature of the executive director of the Industrial Recovery Association of Clothing Manufacturers to Mrs. Anna L. Rosenberg, acting compliance director, N. R. A., 45 Broadway, New York, in which it is stated:

"At a meeting of the Men's Clothing Code Authority, Friday, February 14, it was reported that Mr. M. D. Vincent, by appointment of Mr. Robert K. Straus, had completed an investigation of the said code authority, on or about August 30, and had regarded that the code authority was administered impartially and without discrimination."

There is also contained in this file the following memorandum, signed by Special Agent Howard:

"By direction of Mrs. Anna L. Rosenberg, executive assistant State compliance director, which was confirmed by letter from Robert K. Straus, special assistant to the Administrator July 18, the file in this case was turned over to Mr. Byres H. Gitchell, administration member of the code authority with instructions to complete the investigation under Mr. Gitchell's directions.

"November 23, Mr. Gitchell said I could mark this case closed."

The investigation in this case was ordered closed by direction of Mr. Byers H. Gitchell, under date of November 26, 1934, and the file is stamped, "Confidential, not for public inspection."

This matter would seem to be one requiring further investigation to ascertain what the facts with respect to the alleged raids actually were, and it may be advisable to call Mr. Bell, administration member, or some other industry member of the code authority, Mr. Gitchell, the administration member of said authority, and Mr. Popkin, the complainant, in order to develop the facts.

(The report referred to in the memorandum read by the chairman, together with certain other documents, is as follows:)

NEW YORK, N. Y., *July 10, 1934.*

Re Men's Clothing Industry Code Authority.

Mr. ROBERT K. STRAUS,
Special Assistant to Administrdtor
National Recovery Administration,
Department of Commerce Building, Washington, D. C.

DEAR MR. STRAUS: I am submitting herewith memorandum letter in the matter of the investigation of the Code Authority of the Men's Clothing Industry. The complainant in this case, Martin E. Popkin, executive director of the Industrial Recovery Association of Clothing Manufacturers, wrote Mrs. Anna Rosenberg, executive assistant State compliance director, under date of May 23, 1934. Mrs. Rosenberg gave me Mr. Popkin's letter and requested an investigation of his charges. and I first saw Mr. Popkin on June 23, 1934, at his office, No. 51 Madison Avenue, New York City.

On Friday, June 29, 1934, I interviewed Mr. George L. Bell, executive director of the Men's Clothing Industry, at his office, No. 51 Madison Avenue, New York City, relative to the code authority's interpretation and enforcement of article II (b) of this code, which reads as follows:

"The existing amounts by which wages in the higher-paid classes, up to classes of employees receiving $30 per week, exceed wages in the lowest-paid substantial classes shall be maintained.

In interpretation of the Code of Fair Competition for the Men's Clothing Industry on page 2, paragraph 6, and page 3, paragraph 11, "substantial classes" is interpreted—

"The words 'substantial classes' as used in article II, subdivision (b) are to include 20 percent of the total number of employees employed in any establishment.

"If, however, there is any individual case in which 20 percent seems inequitable, the full facts of such case are to be communicated to the committee provided for in article II, subdivision (d) for their further consideration."

In interpretation, page 3, there is added this paragraph:

"This interpretation shall become effective with the first pay roll following November 20, 1933, and shall not be retroactive."

Mr. Bell called in Mr. Harry K. Herwitz, the comptroller, and the following information was obtained from them: The 20 percent referred to in interpretation no. 6, page 2, is 20 percent of all the employees engaged in direct manufacturing. It

does not mean employees outside the establishment engaged in piecework operations. There was compliance but not enforcement prior to November 20, 1933. That is, compliance in New York, Baltimore, Philadelphia, and Boston, where surveys were made by local associations and wage increases made in accordance with these surveys. In New York City the pay of all workers up to workers receiving $30 per week was raised 5 percent of the total pay roll. In some of the other cities the percentage varied a little—it was not exactly 5 percent. The 20 percent in the interpretation was derived from these surveys. In enforcing article II (b) they are going after all the larger shops. Spot checks are being made of the smaller contract shops. Field investigators are employed. The same formula is being used for each manufacturer. The staff, executives, make no exceptions. The only exceptions are made by the II (d) committee. This committee was appointed September 20, 1933. One member of the committee can act as an examiner and report to the full committee. About six cases have been appealed to the committee out of about 150 heard. Separate records of each case heard are kept by this committee. This committee has made no blanket interpretations for specific territory. Its action is confined to individual cases in which 20 percent seems inequitable. No rules have been formulated to determine when 20 percent is inequitable. All of the equities of each case are considered.

I told Mr. Bell there had been a number of complaints about interpretations and enforcement of II (b), and that the Government was interested, and he likewise should be interested, to find out if there was any foundation for these complaints, and I asked Mr. Bell if he would have any objections to my looking over the records of the II (d) committee to see how these cases were handled.

He first said it would be all right if Mr. Robert K. Straus requested it. Next he qualified this by saying the data which were submitted to this committee were confidential and the N. R. A. would not permit him to make them public. As the matter stands, I cannot say that Mr. Bell has refused access to the files of this committee, because he has not made an unqualified refusal. I am writing, therefore, to ask that you make a formal request that I be permitted to inspect all of the books, records, correspondence, and other data relative to the interpretation and enforcement of article II (b) of the Men's Clothing Code. If Mr. Bell then refuses to permit inspection of his files, I can obtain the evidence elsewhere, but it would take a much longer time, and I am afraid of the unfavorable publicity that the N. R. A. will get if some of the evidence I have already obtained gets to the newspapers.

Mr. Martin E. Popkin, executive director of the Industrial Recovery Association of Clothing Manufacturers, who makes this complaint, tells me he is having trouble in keeping his members in line, and I have promised a speedy investigation of this case. Going direct to the executive director, therefore, seems to me to be the logical, the quickest, and the best way to make this investigation, and I was somewhat suprised at Mr. Bell's reception of my polite request which was made in your name, and by showing my credentials. I do not take it that the records of a code authority are private records. This would be an absurdity. It would be tantamount to saying that the Administrator has created a "frankenstein" authority he cannot control.

However, this case has many angles, and to aid you in making the right decision, I would like to submit a brief outline of the history of II (b), data showing how this article is being interpreted and enforced and some other pertinent facts.

Men's clothing is manufactured under two sets of conditions, where all manufacturing operations are performed in one plant, and where textiles are cut in one plant and the major part of the manufacturing is done in scattered shops known as "contract shops." In the first of these, manufacturing is done in "open shops", or under working agreements with the United Garment Workers of America, a labor union affiliated with the American Federation of Labor. In the second, manufacturing is done under working agreement with the Amalgamated Clothing Workers of America, also affiliated with the American Federation of Labor.

Two codes were presented—one from each of these groups. The Industrial Recovery Association of Clothing Manufacturers presented a code for 111 independent manufacturers operating under working agreement with United Garment Workers of America, or "open shop" manufacturers, the Clothing Manufacturers' Association of the United States of America for the "contract shop", manufacturers who were operating under working agreement with the United Garment Workers of America. The code presented by the latter was accepted. The Code Authority of the Men's Clothing Industry, consisting of 21 members, was organized with 10 members from the Clothing Manufacturers' Association of

America, 3 members from the Industrial Recovery Association of Clothing Manufacturers, 2 other manufacturers, 5 labor representatives, 2 each from the Amalgamated Clothing Workers and the United Garment Workers, and the administration member.

At that time there were 111 manufacturers in the Industrial Recovery Association of Clothing Manufacturers, and less than 4 percent of these were in New York, Baltimore, Philadelphia, and Boston. Out of about 106,000 clothing workers, about 49,000 were affiliated with the Amalgamated Clothing Workers of America, 57,000 with the United Garment Workers, or "open shop" workers, and 35,000 of these 57,000 were employed by the 111 manufacturers, who are members of the Industrial Recovery Association of Clothing Manufacturers.

The statement is often made that the members of the Industrial Recovery Association of the Clothing Manufacturers were invited to join the Clothing Manufacturers' Association of the United States of America. This is true, but it could not have been done without giving up the right to operate "open shop", or under agreements with the United Garment Workers of America. The operating agreement between the Clothing Manufacturers' Association of the United States of America and members provides—

"Paragraph III: Any person, firm, or corporation engaged in the clothing industry is eligible to become a member of the association, provided he agrees to subscribe to the practices and policies adopted, and which shall from time to time be adopted by the association, and the provisions contained in this agreement, insofar as they are applicable to the member.

"Paragraph IV: The association, in the absolute discretion of the board of directors, may prepare standard terms or agreements to be utilized and put into practice by any member, to cover maximum hours of work for each day, and the number of workdays each week, and the minimum rates of pay, and such other working conditions as may be desirable to obtain the benefits of the Industrial Recovery Act for the clothing industry. The members agree to accept and execute such agreement, as individual contracts; or, in the discretion of the association, to be bound by general agreement of the association, and such agreements shall be binding upon all its members as effectively as if each had executed the collective agreement for himself. * * *"

The history of article II (b) is, briefly, as follows:

On July 9, 1933, the President approved the Code of Fair Competition for the Cotton Textile Industry, subject to certain interpretations and conditions, one of which was—

"Paragraph V: The existing amounts by which wages in the higher-paid classes, up to workers receiving $30 per week, exceed wages in the lower-paid classes, shall be maintained."

The Cotton Textile Industry rejected this amendment because it "is susceptible of invasion by unfair competitors", "would be likely to lead to holding down the wages of the lowest-paid excepted classes of labor", "result in inequality of wages as between mills, and give competitive advantage to that class of mills which least deserves it." (See memorandum to the President on Application for Final Approval of the Code of Fair Competition for the Cotton Textile Industry.)

This provision is contained in only five other codes. In its original form in Gasoline Pump Manufacturing Industry, Wall Paper Manufacturing Industry, Lumber and Timber Products Industry.

In the Silk Textile with this qualification:

"But no employers, upon obtaining the consent of the Administrator, need increase wages in the higher-paid classes beyond those maintained by other employers who have increased their wages in accordance with the above provision for the same class or kind of labor, in the same wage district."

And in the glass container industry—

"SEC. 7.—The existing amounts by which wages in the higher-paid classes of employees, up to employees receiving $35 per week, exceed wages in the lower-paid classes of employees, shall be maintained: *Provided, however,* That where the foregoing provision results in rates that are inequitable as between plants for the same work, revision of wage rates for higher paid classes, shall be adjusted in a reasonable manner, subject to the supervision of the code authority."

I am informed by Mr. Popkin that he has discussed II (b) with the executive directors of these code authorities, and all of them are of the opinion that an equitable enforcement of this provision is extremely difficult, perhaps impossible.

The Code of the Men's Clothing Industry differs from all of these in that there is added the word "substantial" making the revision read "lowest-paid substantial classes" instead of "lowest-paid classes."

There is transmitted with this letter exhibits A, B, C, D, E, F, G, H, I, I (a), I (b), and I (c), and "M. E. T. Interpretation" and "Questions not answered," which I received from Mr. Popkin.

An examination of this data I think will show that the code authority has not been able or willing to answer inquiries from members concerning the interpretation of II (b); that some interpretations have been sent only to a part of the trade. That this provision instead of being interpreted one way for all plants, has been interpreted many ways for many plants; that in all probability this provision is not susceptible of equitable enforcement.

The data speaks for itself. Most of it is too technical for discussion in this letter. I would, however, like to call particular attention to the summary at the bottom of page 4 (4) of "Questions not settled:" to Exhibits I (c) and I (d), where under date of April 20, 1934, a bill was sent to the H. A. Seinsheimer Co., for $45,432.69; and on June 22, 1934, another bill for $15,489.18. The first bill covered a period of 11 weeks, and the second, the same period plus an additional week.

To exhibit I (b), letter of Elmer Scheuer to his attorney—

"I must accept their findings that we owe $21,000, or they will assess us still more."

and the subsequent bill for $37,000.

I have other cases similar to the above, and expect to find many more. All of these will be set out in reports to follow.

I am enclosing for your information and ready reference, Code Authorities and Their Affiliations. It will be seen from this that the Clothing Manufacturers Association of the United States of America and the Amalgamated Clothing Workers of America are in control. It is probable that further investigation will show coercion on the part of the Clothing Manufacturers Association and the Amalgamated Clothing Workers and the code authority to unionize closed shops and United Garment Worker shops under agreements with the Amalgamated Clothing Workers. Some bills have been settled and afterwards the plants work under agreement with the Amalgamated Clothing Workers. I talked with Mr. Elmer Scheuer of the Block Co., Cincinnati, Ohio, Saturday, July 7, 1934, and he said it was common talk in the industry that if you sign up with the Amalgamated you will have no difficulty.

From the foregoing it appears that there are two questions to be determined by this investigation.

1. If article II (b) is susceptible of equitable enforcement.
2. If the code authority has used this seemingly ambiguous provision to deal unfairly with and oppress small enterprises and minorities in the industry.

As it is the policy of the N. R. A. to foster self-government in industry any unnecessary inspection of the books and records of code authority could be construed as an interference in this policy.

But where there is strong evidence amounting to what might be called a "prima-facie case", that small enterprises and minorities in the industry are being oppressed. I think there can be no question of the policy or of the right to demand access to code authority records.

The data submitted, in my judgment, amounts to such a prima-facie case, and it is for this reason that I request that you make a formal demand on the code authority to permit your representatives to have access to all books, records, and correspondence and other data relative to the interpretation and enforcement of article II (b) to determine if small enterprises or minorities in the industry are being oppressed by the code authority.

Respectfully submitted.

JOHN C. HOWARD.

EXHIBIT A

JUNE 8, 1934.

MR. FLOYD C. WILLIAMS,
Peck, Shaffer & Williams,
Cincinnati, Ohio.

DEAR MR. WILLIAMS: Following is an excerpt from a memorandum, dated February 7, which I sent to Mr. George L. Bell, executive director of the Men's Clothing Code Authority, referring to article II (b):

"This provision[1], which emulates the provision originating in the textile code, includes a qualifying connotation not contained in the original. The word 'substantial' after 'paid' and before 'classes' is the stumbling block over which

[1] This provision first appeared in the President's conditional approval of the Cotton Textile Code, of May 6, 1933, but was rejected by the Cotton Institute. (See my report to you of May 8, 1934.)

most of the ambiguity occurs. Leaving this word out of the clause at once clarifies the entire provision. Its inclusion has necessitated considerable interpretations, all of which have, by reason of the inconclusive nature of the premise, been arbitrary.

"What purpose does this qualifying connotation serve and what specific aspect of the provision does it intend to cover? If it was intended that this qualification serve to facilitate a broader representation of a base wage fairly representative of existing wages prior to July 14, in conformity with paragraph (b) of article II, that is not accomplished. If it attempts more truly to establish a basic average in the lower paid classes from which the base wage rate may be derived, then it succeeds in so doing, but exceeds the intent explicit in the provision. It intercepts the complete and unqualified enforcement of the provision.

"The minimum wage specified in the code is the fulcrum point of this provision. Wages paid below this minimum may be accurately construed 'in the lowest paid classes.' Wages paid above the minimum may be construed as being 'in the higher paid classes.' The intent of the provision was to maintain the existing amounts by which wages in the higher paid classes exceed wages in the lower paid classes."

I believe the term "classes" is equally open to question.

All of the other disparities in the interpretations issued by the Men's Clothing Code Authority such as, the 20 percent of the total number of employees "employed in any establishment", its effect on the decentralized markets as against the centralized markets, their methods of base wage computations from earnings in contradistinction to the explicit requirements of the provision which designates wages as the ordinate upon which differentials shall be maintained, the disregard of normal operating conditions when earnings are used for establishing the lowest base wage, the application of the differential to the higher paid classes under guarantee as provided for in article II 9 (e), and all the other matters to be considered, have been fully discussed in the previous report which I sent to Colonel Curlee, dated May 26 (copy of which we sent to you).

Cordially yours,

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS,
——— ———, *Executive Director.*

EXHIBIT B

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS,
New York City, November 15, 1933.

DEAR MEMBERS: It is likely that section II (b) and (c) presented, and still does, some problems in its applications particularly to pieceworkers.

On September 28, we sent you all of the interpretations received to that date (and, incidentally, to date) from the Men's Clothing Code Authority, and in paragraph 4 of the said list of interpretations it was stated that "substantial classes are to include 20 percent of the total number of employees employed in any establishment. While the hand-sewing sections are generally the lowest paid classes, they are not representative of the lowest "substantial classes", the latter being more correctly the operating section. If, from this latter section, a number of workers are selected beginning with the lowest paid, up to and including a number equivalent to 20 percent of the total number of employees working in the entire establishment, and their actual working-time earnings prior to July 14, averaged, it will result in a base wage for the substantial classes. The differences between this amount and the minimum prescribed in the code will equal the differential to apply on the higher-paid classes above the minimum, up to $30 per week.

Where piecework rates have been increased to maintain earnings under the code hours in an amount not less than that earned under the longer hours, such earnings should be carefully checked to note whether they exceed the hourly adjustment. Whatever the excess in earnings may be (over and above the hourly adjustment) should be regarded in apply the differential derived from the substantial classes. If the rise in pieceworkers' earnings is above the hourly adjustment and equals the differential in amount, then there is no occasion (in

addition to the hourly adjustment) for applying the differential to the piece-workers' earnings above the minimum.

If the increase in pieceworkers' earnings (above the hourly adjustment) does not equal the differential, then whatever this rise, it should be considered, as stated above, and the net difference between the said amount and the differential applied to the piecework rates in an amount equivalent to the percentage the said net differential bears to the average earnings of the pieceworkers who earn above the minimum.

Very truly yours,

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS.

EXHIBIT C

MEN'S CLOTHING CODE AUTHORITY,
New York City, December 19, 1933.

MR. M. E. POPKIN,
Executive Secretary Industrial Recovery Association of Clothing Manufacturers, New York City.

DEAR MR. POPKIN: I refer to your letter of November 15, which you addressed to your members, copy of which has been sent to me by one of the manufacturers in the Middle West.

This letter referred to the application of section II (b) and (c) of the code, You are quite right in your letter of September 20 when you stated that the "substantial classes are to include 20 percent of the total number of employees employed in any establishment."

I cannot see by what stretch of imagination the hand sewing classes would be excluded as not being "employees employed in any establishment." There is no warrant for you to take such a position and the information that you sent to your members in that case we would regard as wholly misleading.

The code authority, at its meeting on November 28, adopted a simple formula for the carrying out of the provisions of section II (b). You probably have a copy of this interpretation but in any event I am sending it along to you for your guidance.

I would be greatly obliged to you if you will be good enough to broadcast the official interpretation of section II (b) as adopted by the code authority to your membership so that there may be no misunderstanding in the matter.

Very truly yours,

H. K. HERWITZ.

EXHIBIT D

DECEMBER 29, 1933.

MEN'S CLOTHING CODE AUTHORITY,
New York, N. Y.

(Attention: Mr. H. K. Herwitz.)

DEAR MR. HERWITZ: With regard to your letter of December 19 which refers to section II (b) of the code, I have taken the time to check a representative number of our members for their understanding of the letter which I sent them under date of November 15.

None of the firms have construed my letter as you apparently have, to the effect that the "hand-sewing classes would be excluded as not being employees employed in any establishment."

I shall be pleased to go over this matter with you if you desire to do so.

Very truly yours,

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS,
———— ————, *Executive Director.*

EXHIBIT E

MEN'S CLOTHING CODE AUTHORITY,
New York City, November 23, 1934.

LEVINE BROS.,
Cincinnati, Ohio.

GENTLEMEN: When I was in Cincinnati I was unable to make an estimate of the observance or nonobservance of article II, clause (b) reading as follows:

"The existing amounts by which wages in the higher-paid classes, up to classes of employees receiving $30 per week, exceed wages in the lowest-paid substantial classes shall be maintained."

I was unable to make this estimate on account of the fact that your pay rolls did not show the number of hours that the pieceworkers worked during the week. Since that time the Men's Clothing Code Authority has a formula for taking care of these cases.

I would ask you to send to this office a list of all your manufacturing employees working for you now (this does not include administrative help or workers in contractors' shops). Together with each worker's name, I would like to have the following information:

Kind of work he or she does.
Number of pieces he or she makes in an hour's time.
Rate per piece at the present time.
Rate per piece prior to July 14.
Number of hours in a full week prior to July 14.

Very truly yours,

HARRY WOLF.

EXHIBIT F

S. WEITZ & CO., INC.,
Cleveland, Ohio, January 16, 1934.

Contracted Mr. L. S. Weitz, president, Mr. David Weitz, vice president, and Morris Zelden, shop foreman at 3019 Pearl Road, Lorain, Ohio.

Number of employees, 175 in shop; other employees about 25.

Weekly production, 1,000 to 1,200 per week, manufacturing overcoats only.

Labels: B. E. I. and I. N. S. labels have been sewed in all garments.

Regarding compliance with article 2 subdivision "B" beg to advise that I cannot estimate the lowest-paid substantial classes because the hours are not shown in pay roll and they have no time cards of this date. Have written them a letter asking them to send you a list of workers with kind of work he or she does, number of pieces he or she makes in an hour's time, rate per piece at the present time, rate per piece prior to July 14, number of hours in a full week and prior to July 14.

Respectfully submitted.

HARRY WOLF.

EXHIBIT G

SCHEDULE OF INFORMATION REQUIRED, CALCULATION OF 2 B (MORSE)

1. Name of worker.
2. Clock number.
3. Operation or kind of work done.
4. Wages paid week ending July 15, 1933.
5. Number of hours worked same week.
6. Hourly rates (item 4) divided by item 5.
7. Full time weekly wages week of July 15.
8. Piecework rate week of July 15.
9. Piecework rate week of November 20.

9a. Subsequent changes piecework rates and dates effective

Piecework rates may be expressed, if the firm does not desire to give the actual rates, in the form of index number with 100 as the rate for July 15 and subsequent weeks expresses in terms of percentage of increase over July 15.

METHOD OF COMPUTATION, AMOUNT OF DEFICIENCY

10. Hourly difference to be maintained to be computed as in illustration interpretation no. 11.
11. Hourly rates 36-hour week (item 7) divided by (36).
12. Hourly rate 36-hour week plus 2-B differential (item 10).
13. Ratio of (item 12) to (item 6), percentage piecework rates should have been increased to comply with requirements of 2-b.
14. Ratio of (item 9) to (item 8): percentage piecework rates were increased.
15. Ratio of (item 13) to (item 14): percent further increase in piecework rates required.
16. Hourly deficiency (item 12) less (item 14) multiplied by (item 6).
17. Deficiency for each worker equals hourly deficiency (item 16) multiplied by the number of hours worked by worker since November 20.

EXHIBIT H

2-B method

SEINSHIEMER, *June 4, 1934.*

FORMULA WHERE COMPANY HAD HOURS FOR WEEK WORKERS AND PIECE WORKERS

Period covered: 20 weeks, pay roll for W. E. through W. E. (except W. E. Dec. 29, 1933).

Differential to be maintained	$2.33
Number of employees in 20 percent lowest-paid class	48
Number of employees entitled to "2 B" deficiencies	169
Wages received by employees entitled to "2 B" deficiencies	$63,765.13
Wages received by employees entitled to "B" deficiencies	$63,765.13
Total deficiency	$3,668.24
Percent this deficiency is of wages received by employees who are entitled to deficiencies, percent	5.75

Pay rolls: 5 pay rolls have been received and are in satisfactory condition.

METHOD OF COMPUTING DIFFERENCE TO BE MAINTAINED

The actual pay roll for W. E. was obtained by the investigator and the hourly rates as determined from that pay roll used in determing the 20 percent lowest-paid workers. The average wage for a 44-hour week was found to be $12.07 for the 20 percent lowest-paid group—on the basis of actual earnings for the week.

The difference to be maintained is therefore $14.40 less $12.07 or $2.33 for every 36-hour week worked after November 20, 1933.

METHOD OF COMPUTING DEFICIENCIES

1. Determination of rate to be maintained.

The hourly rate to be maintained to comply with article 2, paragraph B was computed as follows:

The actual hourly rate for the week ending _____ was determined for each worker.

2. This rate was increased by 20 percent as an allowance to cover the loss in weekly wages due to a decrease in hours from 44 to 36.

3. To the hourly rate increased by 20 percent (item 2) was added the hourly difference to be maintained, namely $0.0647 (2.33–36), giving the hourly rate which must be maintained to conform to article II, paragraph B.

11. Determination of ratio which rate to be maintained bears to the said paid prior to July 14, 1933.

Example.—Hourly rate to be maintained, $0.45=150 percent (rate to be maintained is 150 percent of rate prior to Code); hourly rate prior to Code, $0.30.

III. Determination of rates which present piece rates bear to piece rates prior to the code.

Example.—Present piece rate, $0.25, 125 percent (present piece rate is 125 percent of piece rate prior to code); piece rate prior to code $0.20.

A flat increase of 25 percent was given on September 11, 1933, to all workers. Therefore, with exceptions noted below, all present piece rates are 125 percent of rates prior to the codes. The following cases were given further increases as per letter from company:

	Increases in addition to 25 percent	Net effect of increases	Date of increase
	Percent	*Percent*	
Employee no. —		31.4	Feb. 15, 1934
Do	9.9	30.4	Do.
Do	9.0	40.6	Jan. 25, 1934
Do	12½	35.8	Jan. 22, 1934
Do	3.6	37.2	Mar. 14, 1934

IV. Determination of individual deficiences; for each worker the difference between item III and item II, (item II less item III multiplied by item I) about gives the hourly deficiency for that worker.

Example.—150 percent, 125 percent, 25 percent, $0.75 hourly deficiency. The hourly deficiency multiplied by the total hours worked by each worker gives the total deficiency for that worker.

EXCEPTIONS

1. Since the individual listed under III above worked at higher rates after the dates indicated, the hourly deficiency was determined both prior to and after that date based on the proper increases. The hourly deficiency for each period was multiplied by the hours worked during that period. The sum of the deficiencies for the period before and the period after the increase equals the total deficiencies for each case in question.

2. Those workers for whom a 25 percent increase was not sufficient to raise their hourly rate to 40 cents were billed as follows:

(*a*) From the hourly rate to be maintained (determined as explained above) was subtracted 40 cents, leaving the hourly deficiency due under article II B. The amount necessary to bring 40 cents is covered under article II, minimum wage.

(*b*) The deficiency determined in each of these cases was multiplied by the total hours worked to obtain the total deficiency under article 2 B.

EXHIBIT I

JUNE 4, 1934.

METHOD OF FIGURING 2B AND DEFICIENCY FOR EACH WORKER WHERE NO HOURS EXIST PREVIOUS TO CODE—COMPUTATION OF DIFFERENCE TO BE MAINTAINED

A. Time workers. Actual hourly rates paid to time workers were obtained by the investigator and therefore the reconstruction of a full 44-hour week for these people consisted in multiplying these hourly rates by 44 hours.

Example.—44 hours × $0.30 = $13.20 (weekly wage for 44 hours).

B. Pieceworkers to obtain the wages for July 7, 1933, the wages of each employee for a full 36-hour week in May 7, 1934, were divided by the ratio of the piece rate of his kind of work in the week ending May 7, 1934, to the piece rate for the same work in July 7, 1933. The result, which is the wages for 36 hours in July 7, 1933, was in each case divided by 36 and multiplied by 44 to obtain the wages for a 44-hour week in July 1933.

Example.—Earnings for 30-hour week of May 7, 1934, $15.00; earnings for 36-hour week of May 7, 1934, $18.00. Piece-rate increase 25 percent, $\frac{18.00}{1.25}$ = $14.40, earnings 36 hours July 7, 1933; $14.40 × $\frac{44}{36}$ = $17.60, earnings 44 hours, July 1933.

C. From the reconstructed pay roll for July 1933, were selected the 20-percent lowest-paid workers; their average wage for 44 hours was computed and subtracted from $14.40 leaving $1.98 as the difference to be maintained.

METHOD OF COMPUTING DEFICIENCIES

To the reconstructed wages for a 44-hour week in July 1933 was added $1.98, giving the weekly rate to be maintained. This weekly rate to be maintained was then divided by 36 hours to secure the hourly rate to be maintained in each case. The amount by which this hourly rate to be maintained exceeds each worker's present average hourly earnings, as computed from the pay rolls sent in by the company, is the amount of the hourly deficiency for that worker. This amount multiplied by the total hours worked since November 20, 1933, is the total deficiency for that worker.

Computations of hourly rate to be maintained. Example:

1. Actual earnings for 34¼-hour week ending May 1934, $27.69. Divide $27.69 by 34.75 hours; $0.7968, hourly earnings week ending May 1934.
2. Divide $0.7968 by 1.225 percent; $0.6504, hourly earnings prior to July 14, 1933 (piece-rate increase).
3. Multiply $0.6504 by 44 hours; $28.62, full 44-hour-week earnings prior to July 1933.
4. Divide $28.62 by 36 hours; $0.795, hourly earnings required to earn same amount in a week at present as earning in July 1933.
5. Add $0.065, the hourly difference to be maintained, to $0.795, $0.85; $1.98 divided by 36 equals $0.055; $1.98 weekly difference to be maintained.

The amount by which average hourly earnings since November 29, 1933, as computed by pay rolls, falls short of this hourly rate to be maintained in the amount of the hourly deficiency in each case and when multiplied by the total hours worked since November 20, 1933, gives the deficiency.

EXHIBIT I (A-1)

JULY 3, 1934.

The attached exhibit 1 (A-2) is typical of Men's Clothing Code Authority procedure.

Please note that the exhibit is dated June 19, 1934. It is a report from the code authority of alleged differentials due workers in the case of this plant, and the amount of restitution accrued for the period indicated. Please note that notwithstanding numerous formulas issued by the code authority this firm is given no explanation of the mathematics followed in arriving at the results indicated other than the fact that they have pursued the 20 percent lowest-paid employees, etc.

Please note that the differential arrived at for the longer working hours prior to the code is recommended for application on the shorter working-hour week after the code, without integrating the amount, so that the differential may be applied on an hourly rate basis after the code, representative of the hourly differential rate for the longer hours prevailing in the longer week prior to the code.

Note also that the recipient might be justified in questioning whether the differential is to be guaranteed on a weekly basis or an hourly rate.

Note also that there is nothing which would indicate the employees used in the computation, but only the employees to whom the differential is alleged to be due.

Note also the third paragraph which says, "Having failed to do so, you are now being charged with the aforesaid underpayments." How could they have failed in any obligation without having known what the obligation might be, or even how it was to be arrived at? How could such a person be "charged with" the aforesaid underpayments?

Note that this firm is requested to make their check payable to the code authority, in the amount of the alleged deficiencies due "so that the same may be distributed to the workers * * *."

In the first place, if such differential is correct, this firm would have to make payments to its employees every week and not only for that particular period. The code authority letter does not indicate that they would require them to make their check payable to the code authority each week. Why then for this particular period only? The fact that this amount is accrued, according to the code authority conclusions, does not transfer the obligation from the employer to the code authority instead of his employees. Moreover, it can readily be imagined what effect such procedure would have on the morals of a working force.

Incidentally, this firm is not a member of our association. They have merely written us for help and counsel.

M. E. P.

EXHIBIT I (A-2)

MEN'S CLOTHING CODE AUTHORITY,
New York, N. Y., August 19, 1934.

SEIFER VEST SHOP,
Cincinnati, Ohio.

GENTLEMEN: Our accounting department has audited the report of our investigator dated May 24, 1934, relating to your observance of article II, subdivision (b), of the Men's Clothing Code. We find that you have omitted to pay the amounts due to your higher paid classes of workers earning up to $30 a week (cutters and off-pressers omitted), set forth in the attached schedule of underpayments and amounting to a total sum of $93.13. This deficiency covers the period of the week ending January 5, 1934, through the week ending March 23, 1934.

The difference to be maintained as provided for in article II (b) for your shop was obtained by subtracting the average of the 20-percent lowest paid employees from $14.40 (the minimum weekly rate for a 36-hour week). Said difference to be maintained was found to be $3.67 per week for a full 36-hour week.

Under the code you were required after November 20, 1933, to add $3.67 to the weekly wages paid to employees listed on the attached schedule. Having failed to do so, you are now being charged with the aforesaid underpayments.

You should send check for the sum of $93.13 made payable to the order of the Men's Clothing Code Authority so that the same may be distributed to the workers appearing on the attached schedule.

Very truly yours,

MEN'S CLOTHING CODE AUTHORITY,
C. W. FORD, *Auditor.*

EXHIBIT I (B)

NEW YORK, N. Y., *May 1, 1934.*

MR. I. LEVIN,
Care of Butgel, Levin & Winston, Detroit, Mich.

DEAR IZ: I have just finished up my meetings with the code authority, and we cannot possibly get together on any common ground. They have taken a very arbitrary stand; and to sum it all up in a few words, either I must accept their findings that we owe $21,000, or they will assess us still more.

I established through a previous meeting and correspondence with them that we had a great deal of idle time in our plant prior to the code, due to spreading the work. They now claim that there is no such thing, although they have admitted in one letter that we would have an allowance of 17.7 percent of waiting time.

The details are very long and complicated, and it will probably be necessary to fight the case through the code authority, the Compliance Board in Washington, and probably the courts.

Sincerely,

ELMER SCHEUER,
The Block Co.

NOTE.—Original bill, $21,000; subsequent bill, $37,000. All records and correspondence in above case available.

EXHIBIT I (C)

JULY 3, 1934.

On April 20, 1934, the H. A. Seinsheimer Co., of Cincinnati, received a report and bill from the Men's Clothing Code Authority on II (b), amounting to $45,432.69.

They were advised that they would have to pay a weekly differential of $8.24 in their Cincinnati shop and $9.12 in their New Albany shop, to each employee earning over the average wage earned by 20 percent of the lowest-paid workers and under $30 per week.

This amounts to an increase of approximately 50 percent and 60 percent respectively, to an employee whose earnings are $14.40 per week.

They have since received a revised bill from the Men's Clothing Code Authority which has been materially decreased. (See copy of telegram from Seinsheimer attached.)

M. E. P.

EXHIBIT I (D)

JULY 5, 1934.

Résumé of H. A. Seinsheimer Co. communications, reports, and code authority exhibits, dated, respectively, April 20, June 25, and July 3.

Received, under date of April 20, 1934, bill from code authority in the amount of $45,432.69, supposedly covering deficiencies under II (b) of the code.

After inquiries made by the firm as to basis of such a bill and informal hearing by representatives of the code authority, the latter submitted a revised bill. On Friday, June 22, the Seinsheimer Co. received a detailed list of alleged deficiences amounting to about one-third of their original bill of $15,489.18. The first bill covered a period of 11 weeks; the second bill covered the same period, and an additional week.

On the same day Mr. Betterson, investigator for the code authority, advised the firm that another change has been made.

The firm further reports that attempts to check individual alleged deficiencies on their new bill by means of the original formula or the revision have been unsuccessful. They go on to say, "It appears that another method of calculation has been brought into the picture and we have written for it."

In a communication under date of June 27, 1934, the code authority, in response to an inquiry from the firm on what method was used in calculating their revised II (b) alleged deficiencies, counsel for the code authority (who wrote the letter) refers the firm to articles II (b), II (e), II (f), and IV, and appended thereto is an illustration for one worker. It involves a long series of computations, but in substance, it does not give any information other than that originally submitted or known to the firm before or after it got its first bill. To this communication the firm responds under date of June 20 and inquires as follows: "On what interpretation or wording of the law do you support the inclusion of superannuates among the lowest-paid 20-percent individuals when you deduct that average weekly earning from $14.40, which is the minimum under the code for all regular operators * * *?" "We would like to inquire why in the case of the illustration used in your letter for a New Albany worker, 30 percent was added to the hourly earnings for the precode reference week in addition to the hourly differential." "According to our interpretations, the Men's Clothing Code Authority have used a different method for computing the precode hourly earnings for pieceworkers in our plant than that used in other plants * * *." "It is apparent that the application of the formula shown in your letter will result in two operators after the code, working on the same operation, enjoying a different rate of pay per piece." "How do you propose to make such an adjustment?" "The clarification of the above questions is necessary before we can intelligently attempt to check the alleged deficiencies."

EXHIBIT J

NOVEMBER 1, 1933.

MEN'S CLOTHING CODE AUTHORITY,
225 Fifth Avenue, New York City, N. Y.
(Attention Mr. David Drechsler, secretary.)

GENTLEMEN: I call your attention to the amendments and additions to the Men's Clothing Code, approved by the Men's Clothing Code Authority at a meeting which the said body held on September 20, 1933, the attached being a transcript thereof.

The said amendments and additions cover a number of questions which were presented by this association to your offices over a period considerably before and for more than a month after those amendments and additions covering the said questions were approved by the Men's Clothing Code Authority. Notwithstanding, we as a national trade association in the industry, were not advised by your offices in this matter. We finally obtained the information bearing upon our questions which we repeatedly presented to you, from sources other than your offices, it being clearly evident that information thereon was placed at the disposal of some manufacturers and not at the disposal of others.

Any amendments or additions to the code, approved by the Men's Clothing Code Authority, are not effective for a part of the industry before they are fully approved by the President, and effective for the entire industry I do not question the authority of your offices to grant exceptions to cases involving peculiar circumstances; but it cannot be the intention of the Clothing Code Authority to recognize conditions common to the industry as exceptions in any particular cases.

Your adherence to a uniform policy in the issuance of information of general interest to the industry, appertaining to the code, will materially alleviate any inadvertances in compliance that may otherwise unavoidably accrue.

Very truly yours,

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS.

EXHIBIT J-A

The following amendments and additions to the Code of Fair Competition for the Men's Clothing Industry were approved by the Men's Clothing Code Authority, at a meeting held on September 20, 1933:

1. Substandard employees:

A manufacturer shall be entitled to make claim for exemption from the minimum wage for any worker in the minimum wage class who, by reason of old age or any other physical disability, is unable to produce work ordinarily and usually produced by employees in the same class.

To avail himself of each exemption he must report the committee provided for under article II, subdivision (d), the name of such employee, the age, the nature of the disability, the particular operation upon which such worker is employed, and a comparative statement of the production by other workers in the factory employed in performing the same operation, together with such further information as would, in the opinion of a manufacturer prove to the committee that the worker for whom the exemption is claimed is in a substandard class.

2. That article XII, subdivision (b), be amended to read:

A manufacturer or a contractor shall not make garments from fabrics, trimmings, and/or other materials owned or supplied by a manufacturer, jobber, wholesaler, or retail distributor; or the agent, respresentative or corporate subsidiary or affiliate of such manufacturer, jobber, wholesaler or retail distributor, nor shall he manufacture garments from fabrics, trimmings, and/or other materials the purchase of which is made upon the credit of or the payment for which is guaranteed by such manufacturer, jobber, wholesaler or retail distributor, or the agent representative, or corporate subsidiary or affiliate of such manufacturer jobber, wholesaler or retail distributor. This section shall not prohibit the operations of retail distributors owning and operating their own plants, shops, or factories who distribute products manufactured therein directly to consumers.

3. Interpretations:

Nonmanufacturing employees as used in article II shall be construed to refer to the exempted employees mentioned in article IV.

EXHIBIT K

JUNE 20, 1934.

Mr. GEORGE L. BELL,
Executive Director, Men's Clothing Code Authority,
New York, N. Y.

DEAR MR. BELL: I am attaching hereto a list of interpretations made at the Men's Clothing Code Authority meeting of Friday, March 2, 1934.

A number of these interpretations are not contained in your Bulletin of Interpretations issued on January 6, 1934, nor have I been advised to date of these interpretations.

A copy of the enclosed list was left by one of your investigators with a manufacturer in the industry.

I am calling this to your attention in view of the assurance to me by Mr. Drechsler and yourself that I would be promptly advised and currently posted on all such matters.

Very truly yours,

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS,
———— ————, *Executive Director.*

Note: July 3, 1934, 12:40 p. m.: Received telephone call from Mr. Bell. He advised that these interpretations not officially approved, but given to field investigators as representing Code Authority opinions.

N. E. P.

EXHIBIT K (A)

INTERPRETATIONS MADE AT THE MEN'S CLOTHING CODE AUTHORITY MEETING FRIDAY, MARCH 2, 1934

1. Where two or more persons, engaged in the manufacture of clothing, perform productive labor in the manufacture of such clothing, such persons come within the provisions of the Men's Clothing Code.

2. A worker who cuts a piece of lining from the bolt and uses a pattern as a guide for cutting said lining, is a cutter within the definition.

3. A worker who is employed in the cutting of master patterns if such work is done in a department wholly segregated from any manufacturing operations, is classified a nonmanufacturing employee. A person who cuts a paper pattern from a block pattern is a cutter within the definition.

4. The earnings of any workers shall be determined on the basis of the number of hours worked in any 1 week.

5. Busheling on garments sold at retail direct to the consumer and returned for alterations by the consumer, is a nonmanufacturing operation only when such operations are carried on in a separate department wholly distinct from manufacturing operations.

6. An employeee whose work is divided between operations which are classified as manufacturing and nonmanufacturing, shall be compensated on the basis of the number of hours worked on each of the several operations, on condition that the employer shall keep an adequate and proper record which will disclose the number of hours worked on each of the several operations, the amount of earnings received per hour, and if the work is on a piece-work basis, the piece-work rates.

7. An employee who wets cloths for the off-presser shall be classified as a manufacturing employee.

8. A worker who cuts canvas and selicia as well as vest-back and body linings, shall be compensated at the rate of not less than $1 per hour for the time spent in cutting vest-back and body linings, and may be compensated at a lower rate for the time spent in cutting canvas and selicia, on condition that the employer disclose the number of hours worked on each of the several operations, the amount of earnings received per hour, and if the work is on a piece-work basis, the piece-work rates.

9. An employee, engaged in the printing of joker tickets, shall be classified as nonmanufacturing.

10. (Void.)

11. A worker engaged in the sponging and shrinking of cloth, shall be classified as nonmanufacturing, provided, however, that this work is done before the cloth is cut.

12. A worker who carries patterns to and from the racks, shall be classified as nonmanufacturing.

13. A worker who checks the lay after it has been marked by the cutter, and/or checks the out after it has been cut by the cutter, is a cutter within the definition.

14. A person who checks the lay and/or the out, and neither marks, cuts, or fits, shall be classified as a supervisory employee.

15. Routing from bins of cloth out in bulk to the various shops, is a nonmanufacturing occupation.

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS,
New York, N. Y., June 29, 1934.

Mr. JOHN C. HOWARD,
New York, N. Y.

DEAR MR. HOWARD: Pursuant to the matter we have been discussing and the data submitted to you, I want to make it perfectly clear that the interpretations which I have set forth and include in the memoranda submitted to you on article II (b) of the Men's Clothing Code, are only a partial list of the factors to be considered, and that they represent my personal and not the official views of our association, and are not to be construed as a tender which would make the provision itself equitable in its broader sense.

Cognizance of and full recourse to these interpretations in applying II (b), would serve to give the individual manufacturer a responsibility reasonably defined equity, but would by no means alleviate the discrepancies as between manufacturers, or remove the advantages which may be obtained thereunder by such parties who deserve such advantages the least.

Accordingly, I must ask you to consider carefully the above facts in relation to the use of the data submitted.

It is my understanding that you contemplate making a report to your authorities. May I ask you to submit a copy thereof for my review before it is presented?

Cordially yours,

INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS,
M. E. POPKIN, *Executive Director.*

MAY 12, 1934.

MEN'S CLOTHING CODE AUTHORITY

Clothing Manufacturers Association of the United States of America.—Victor S. Riesenfeld, of Cohen, Goldman & Co., 45 West Eighteenth Street, New York, N. Y.; Raymond H. Reiss, of International Tailoring Co., Fourth Avenue, New York, N. Y.; Max L. Holtz, of Louis Holtz & Sons, Inc., 850 Hudson Avenue, Rochester, N. Y.; Frank P. Zurn, of Alco Zander Co., 1027 Callowhill Street, Philadelphia, Pa.; Bertram J. Cahn, of B. Kuppenheimer Co., Inc., 415 South Franklin Street, Chicago, Ill.; Benjamin J. Lebow, of Lebow Bros., 104 West Baltimore Street, Baltimore, Md.; Maurice Gordon, of Trimount Clothing Co., Inc., 13 Harvard Street, Boston, Mass.; Rudolf Greeff, general manager, Greater Clothing Contractors Association, Inc., 41 Union Square, New York, N. Y.; Charles D. Jaffee, of Jaffee-Cohen & Long, 115 Fifth Avenue, New York, N. Y.; Mark W. Cresap, of Hart, Schaffner & Marx, 36 South Franklin Street, Chicago, Ill.; ElmerL. Ward, of Goodall Co., Knoxville, Tenn. (address him at 200 Fifth Avenue, New York, N. Y.); Louis A. Hirsch, of Hirsch, Waintraub & Co., 1321 Noble Street, Philadelphia, Pa.

Other than clothing manufacturers associations members.—Sol Heumann, of Keller-Heumann-Thompson Co., Inc., 1415 Clinton Avenue West, Rochester, N. Y.; Frank C. Lewman, of Richman Bros., 1600 East Fifty-eighth Street, Cleveland, Ohio.

Labor.—Sidney Hillman, president Amalgamated Clothing Workers of America, 15 Union Square, New York, N. Y.; Hyman Blumberg, of Amalgamated Clothing Workers of America, 15 Union Square, New York, N. Y.; Samuel Levin, of Chicago Joint Board, 333 South Ashland Boulevard, Chicago, Ill.; Thomas A. Rickert, care United Garment Workers, Bible House, Third Avenue and Ninth Street, New York, N. Y.

Appointed by administrator.—Byers H. Gitchell, deputy administrator, room 4318 Commerce Building, Washington, D. C.

Officers.—Mark W. Cresap, chairman; Charles D. Jaffee, vice chairman; Frank C. Lewman, vice chairman; Victor S. Riesenfeld, treasurer; David Drechaler, secretary and counsel; Raymond H. Reiss, assistant treasurer; George L. Bell, executive director.

JUNE 15, 1934.

Committee—Article II (d).—Bertram J. Cahn, chairman; Victor S. Riesenfeld, vice chairman; Charles D. Jaffee; Hyman Blumberg; Thomas A. Rickert.

The words "substantial classes" as used in article II (b) are to include 20 percent of the total number of employees employed in any establishment.

(*a*) I hold that the above is not an interpretation explicit in its logic or delineative of the basis for the conclusion.

(*b*) It is a conclusion which precludes the characteristics or identity of the basis upon which the conclusion is predicated:

(*c*) In addition the intended conclusion is not truly conclusive in that it is supplemented by a qualification in which there is an obvious connotation that this so-called "interpretation" (or, more clearly for purposes of analytical logic, "conclusion") is apparent in the said supplement which sets up a committee provided for in article II (d) for further consideration of the qualification necessary in modifying or remolding this presumed interpretation.

(*d*) From what portion of the employees "employed in any establishment" shall the 20 percent be chosen? The procedure has obviously confined itself to such employees as comprise 20 percent of the employees employed in any estab-

lishment beginning with the lowest-paid worker whose earnings are in the lowest brackets. There has been no attempt to identify or segregate this choice of 20 percent into classes of workers either by elements characteristic of skill or function.

(*e*) Performance or output, as evident by the workers' earnings, seems to be the component element upon which the lowest average base earnings are established without any relation either to skill, function, or normality of production.

(*f*) The line of demarcation as set forth in the 20 percent places a given number of operators in both the lower and higher classes at the same time where such operators are doing the same and identical operation only because a few remaining operators in such group may have been in excess of the 20 percent. Then again, in the lowest-paid so-called "substantial" there may be operators on the same operation rated at different differentials due them because of the fact that as pieceworkers all their earnings are not identical and therefore the amount of difference between their earnings and the minimum in the code would vary.

(*g*) An example of its application and economic absurdities resulting therefrom may be set forth as follows:

Plant 1.—Earnings of lowest-paid substantial classes precode, 20 cents per hour. Average earnings of higher-paid classes, 40 cents per hour. Differential between lowest-paid substantial classes and the minimum, 20 cents per hour. Subsequent rate for higher-paid classes, 60 cents per hour. Average rate per man-hour for lower and higher-paid classes, 56 cents per hour (this resulting from 20 percent of the direct labor force at 40 cents per hour postcode, and 80 percent of the direct labor force at 60 cents per hour post code.

Plant 2.—Lowest-paid substantial classes, 40 cents per hour. Differential due higher-paid classes, 0. Likely result average wage per man-hour in both lower- and higher-paid classes, 40 cents per hour. Possible variations between these two extremes would give an indication as to the absurdities and inequalities which may exist as between plants.

(*h*) Referring again to the so-called "interpretation" in the above title, and the qualifications necessary, as set forth in paragraph (*c*), the code authority has found it necessary to resort to different formulas for ascertaining not only the basis for arriving at representative earnings of the lowest-paid substantial classes, but also the various formulas for applying the resultant differential to the so-called "higher-paid classes." The word "necessary" as used herein, is subordinate to the fact that the circumstances encountered in practical application of article II (b) have compelled departures not intended in article II (b) and/or foreign to an equitable wage differential provision.

(*i*) It has been shown in paragraph (*g*) what the practical consequences are as between plants 1 and 2, and the variables granted between the two extremes. There are other economic absurdities which result from varying operating conditions peculiar to the industry. There is the so-called "manufacturer" who confines his operations to cutting only in his own plant, with labor in the highest brackets; but who gives out his cut merchandise to be fabricated by a contractor who employs labor in the next highest brackets and in the intermediary classes, who are categorically referred to in the code as the higher-paid classes. This contractor, in turn, has the greatest portion and in many instances all such operations as afford the workers thereon earnings in the lowest brackets done on the outside as "home work." Then there is the type of manufacturer who performs all of the operations concurrent with the cutting, trimming, fabrication, etc., of men's clothing within his own organization in a wholly integrated plant. The precode position of these two types of manufacturing operations peculiar to the industry are respectively affected in wholly different ways by the application of article II (*b*) either where all of the technical or economic factors are considered and where efforts are made to enforce it with equal mathematical precision. The results in each case notwithstanding are bound to be and are wholly different.

(*j*) By what reasoning are superannuates and learners employed precode included in the lowest-paid substantial classes in view of the fact that the maintenance of wage differentials are intended as between classes of workers who are representative of normality, be it skill, function, or output?

M. E. P.

JULY 13, 1934.

ARTICLE II (B)—MEN'S CLOTHING CODE

M. E. POPKIN INTERPRETATIONS

(*a*) The difference in amount between the lowest hourly wage rate prevailing prior to the filing date of the code, and the minimum wage rate specified in the code, is to apply in the said amount to the hourly wage rates in the higher paid classes under $50 per week.

(b) Whether wages are on an hourly or piecework rate basis, no one may receive less than 40 cents per hour. In applying the differential to piecework operations, the following procedure would be correct:

The piecework operation list should be revised so that all operations falling either into the lowest or higher paid classes will afford the workers an hourly wage rate of 40 cents. If the total cost of the piecework operations representative of all of the lowest paid workers (up to 20 percent of the total direct labor force) was 50 cents and it was necessary to enhance the said piecework cost in the lowest paid classes to 80 cents (in order to afford the lowest paid classes a minimum of 40 cents per hour), each of the remaining operations in the higher paid classes should be enhanced by the percentage which the amount (necessary to revise and raise all of the operations representative of the lowest paid classes to the minimum) bears to the total cost of all in the remainder of the operation list, plus the amount of the differential.

(*c*) In the references to the lowest paid and higher paid classes, the former is construed as represented by 20 percent of the total direct labor force, excluding superannuates and learners,[1] employed in the establishment, beginning with the lowest paid workers; and the latter is construed as represented by all of the remaining direct labor force employed in the establishment, excluding superannuated and learners earning under $30 per week, and offpressers.

(*d*) Where a plant employs all of its hand sewers and hand finishers "in the establishment" the lowest paid classes shall exclude such workage and workers in arriving at the lowest paid wage rate for computing the wage differential due the higher paid classes, but shall not preclude these lowest paid classes employed in the establishment from the lowest paid wage rate required in the code, unless the code authority clearly indicates that such hand sewers and hand finishers who are not employed "in the establishment" in other plants are included in computing the lowest paid class wage rate for the latter plants.

(*e*) Where the earnings of the majority of the workers in the higher paid classes (resulting from the enhanced piecework rates in such classes), indicate that such workers are able to earn their minimum plus their differential (if any such differential applies), it shall be construed as complying with article II (e), and the minority workers in such higher paid classes who are not earning their minima plus such differential, shall be guaranteed only the lowest minimum wage rate in the code.

(*f*) Any increases given to the higher paid classes above the minimum between the filing date of the code (July 14, 1933) and the effective date of the code (Sept. 11, 1933) shall apply against such wage differentials as may be due the workers in the higher paid classes, as provided for in section II (b).

(*g*) If the majority of the earnings in the higher paid classes, subsequent to the effective date of the code, are, on an average, not less than their earnings shall be construed as having not the adjustment commensurate with the reduction in hours.

(*h*) Any period selected for the determination of the base wage rate which prevailed for the lowest paid classes prior to July 14, 1933, shall be representative of not less than one complete production turnover cycle, in which the average production turned out of the factory per week, divided into the total amount of work in process, indicates the nearest number of full pay-roll weeks from which such base wage average for the lowest paid classes shall be chosen.

(*i*) Since it is axiomatic that the differentials to be maintained as provided for in article II (b) are intended to cover wages and not earnings, and since

[1] A learner is construed as any worker on the pay roll for less than 12 weeks at any per iod prior to July 14, when such period is used as a basis for arriving at the lowest prevailing wage rat e.

A superannuate is construed as any person whose earning capacity is limited by physical or mental defects or age, as set forth in the President's Reemployment Agreement and/or the President's Executive order of Dec. 15, added by amendment as par. (*g*), art. II of the Men's Clothing Code, and/or as defined in the seventh paragraph of Administrator Johnson's letter to the President, dated Dec. 12, in pursuit of the foregoing recommended Executive order, in which he reports. "The code authority unanimously recommends the approval of a provision which would allow the employment of substandard or handicapped workers at a wage below the minimum provided in the code * * *."

under piecework compensation earnings are used as a basis for checking the adequacy of wages, all earnings computed for the lowest paid classes shall include a full production turnover cycle such as above cited.

Where a plant has subscribed to the "spread-the-work movement", inordinately low earnings of workers in the lowest paid classes in such establishments, prior to July 14, shall be enhanced on an hourly rate basis equivalent to the difference in percentage between the man-hour performance per garment, indicated at any normal and comparative period subsequent to the effective date of the code (Sept. 11, 1933) and the man-hour performance per garment prevailing in the period prior to the filing date of the code (July 14, 1933), before wage differentials are arrived at between such lowest paid classes and the minimum for application to the higher paid classes.

(*j*) No restitution shall be retroactive in the matter of article II (b) until the full agreement of the interpretations and questions set forth are reached.

QUESTIONS NOT SETTLED

The code authority interpretation of what constitutes "lowest paid substantial classes", as set forth on page 2 of their bulletin of interpretations, issued January 5, 1934, and the formula indicated on page 4 of the said bulletin, is controversial.

In the first place, it is not settled that the interpretation is being applied in cases where the lowest-paid workers are not employed "in the establishment." Then again, while the interpretation reads, "20 percent of the total number of employees employed in any establishment", the formula reads, "Total of manufacturing employees in your factory", and by example indicates 20 percent of this total.

In the second place, the formula advocates "1 full week immediately prior to July 14, 1933." This is not adequate for reasons cited in my interpretations.

Then again, while the differentials apply to the higher-paid classes under $30 per week, there already is an established differential for the offpressers (manufacturing employees). Yet the formula shows that if such a worker earns under $30 per week, he must receive a differential upon his already established wage differential.

The formula advocates the use of "average earning for 1 full week." This obviously refers to alleged standard weekly operating hours for the plant. It does not take into account that a plant may operate with a substantial number or all of its employees for the full weekly hours on production quotes for below normal in an effort to spread its work amongst as many of its employees as possible. Consequently, such a formula would result in a base wage rate that would have no relation to the amount of production man-hours required for merchandise turned out in relation to wages paid. (See United Garment Workers' agreement with member A and C, requiring work distribution in slack periods.)

* * * * * * *

Another point of issue is the fact that the code authority by its interpretation establishes the fixed intermediary class of higher paid workers without any relation to the skill requirements which any part of this intermediary higher-paid class bears to the lowest-paid class skill requirements. For example, there are now three minimum wage classifications in the code. The difference between the lowest-paid workers prior to the code and the minimum is a basis for applying and thereby establishing the fourth or intermediary class. In using the code formula, any amount of workers in excess of the lowest-paid 20 percent, whose average earnings prior to the filing date of the code were in the lowest-wage class, are automatically and arbitrarily thrown into the higher-wage class.

If an employer subsequent to the effective date of the code has (by reason of reduced operating hours and increased business) added substantially to his forces, all such new workers are subsequently employed are automatically placed in the higher-paid wage class.

What line of demarcation remains to perpetuate or maintain the 20 percent lowest-paid classes, with increasing or decreasing forces, in contra-distinction to the higher-paid classes? They are not using the percentage basis after the effective date of the code for allocating differentials to the higher-paid classes.

The above situation is evident from an analysis of the code authority procedure in the case of one of our members, A, wherein they divided all direct labor workers (excluding cutters, offpressers and nonmanufacturing employees, departing in so doing from their interpretation of Sept. 26, 1933) into two groups, the lowest paid 20 percent who made under 40 cents an hour, and all other, whether

they made 40 cents an hour were not included in the higher-paid group because obviously they did not have enough in the lower-paid group to equal the 20 percent, apparently setting up the hand finishers and hand sewers as the lowest-paid classes, and the remainder as the higher paid of the force.

Further analysis of the code authority report to member A indicates that while they have arrived at a base wage rate for a period prior to the code from 20 percent of the lowest-paid workers in the total direct labor force, in the period subsequent to the code they reduce the lowest-paid classes only to 12 percent of the total direct labor force. Introducing the lowest-paid classes subsequent to the code to 12 percent of the total direct labor force (which direct labor force has been increased, but only the amount of people equalling the 20 percent of this force prior to the code used for class allocation), they automatically increased the higher-paid classes to 88 percent of the total labor force. The reduction by 8 percent in the lowest-paid classes apparently results from failure to replace workers who have quit or been discharged, with an equivalent number of workers employed in their stead, plus a departure from the 20–8-percent ratio. Thus, new workers are brought into the higher-paid-wage class.

What is the position of the employer in higher-paid class differentials and restitutions due thereunder in relation to the new employee who was not on the company's pay roll at the time wage differentials were arrived at and/or during the period for which such differentials have presumably accrued for his class.

I have explained my position under "Interpretations" with regard to the new employee in the higher-paid classes as well as the lowest-paid classes.

We have seen what the code authority has ruled in the case of member A in matters of new employees in relation to their classes.

In the case of another one of our members, B, the code authority indicated by a bill for restitution what their position is concerning differentials due higher paid classes whether they earned the minimum plus the differential on piecework or not, and in the case of member A, the new employee automatically goes into the higher paid classes more or less by a process of elimination from the lowest paid classes.

Now, in another case, one of our members C, as also in the case of our member A, the members contended that the earnings arrived at by the code authority for a period prior to the filing date of the code, were in both instances not representative of normal operating conditions, with resultant inordinately low weekly earnings were in the lowest paid classes, and since earnings were used as a basis for ascertaining wage differentials, the earnings used for the workers should be computed at the then prevailing piecework rates, but under normal operating conditions as representative in some adequate period of normal operations subsequent to the code. The code authority, in response, cited article II (e) and (f) the code, and supplemented said citations with the following comments:

1. Obviously the code signed by the President on August 28, 1933, referred to the differentials to be maintained as applying to conditions prior to the code. The measuring rod was of conditions then prevailing and said measuring rod cannot be determined on the basis of conditions that may prevail at some subsequent date. (Bell.)

2. It is obvious that the increased earnings in March 1934 were the result of a larger number of pieces being produced per hour by each individual working then, than was produced by the same workers in March 1933. (Bell.)

And further on,

3. Any increased earnings which might result from increased production by the individual worker subsequent to the effective date of the code, may not be used as an off-set toward fulfilling the requirements that the differential established under article II (b) shall be maintained.

Our position in reply (member C) was: Since all workers are paid at piecework rates, which were enhanced subsequent to the code, it is reasonable to presume that workers would have less occasion to speed up their output now as compared to a time when their piecework rates were lower. With no change in production facilities the firm could hardly be accused of requiring more output from its employees to offset any increases, particularly as in the face of the above circumstances.

In the case of member A, the code authority admitted the inadequacy of using 1 week as a basis for ascertaining representative earnings of lowest-paid workers, and permitted the use of 4 weeks, but subsequently abrogated their own decision.

If a manufacturer's pay roll prior to July 14 indicates that his lowest-paid classes average 40 cents per hour, he has no differential to apply to the higher-paid or intermediary classes.

If a manufacturer's pay roll prior to July 14 indicates an average of 20 cents per hour in the lowest-paid classes, he has a differential of 20 cents per hour in the higher-paid or intermediary classes.

In the first instance, the manufacturer might average an hourly rate of 40 cents for both the lowest and intermediary classes, and in the second instance the average for both the lowest and the intermediary classes would be 56 cents per hour.

Then again, if a manufacturer establishes a new plant subsequent to the effective date of the code, he has no differential for the intermediary classes.

As the Cotton Textile Institute has aptly expressed it to the President in their refusal to accept this tender known as "condition 5" (the wage-differential provision which went into our code), "It is believed susceptible of evasions by unfair competitors and could be likely to lead to holding down the wages of the lowest paid excepted classes of labor and result in inequalities of wages as between mills, and give competitive advantages to that class of mill which least deserves it."

In some instances the code authority has requested members to submit complete operation lists with rates and after the code.

In other cases they have requested total costs before and after the code.

In other cases, amount of units turned out in each operation per hour, and the rates before and after the code, as well.

In still other cases they have requested the percentage of increase in each operation after the code as against a period prior to the code.

I call your attention to the sane provision for wage differentials, now known as article XIII, in the Cotton Textile Code, which was suggested by the President in lieu of the wage-differential provision tendered them, rejected (and now in our code), which reads:

"The amount of differences existing prior to July 17, 1933, between the wage rates paid various classes of employees (receiving more than the established minimum wage) shall not be decreased—in no event, however, shall any employer pay any employee a wage rate which will yield a less wage for a work week of 40 hours than such employee was receiving for the same class of work for the longer week of 48 hours or more prevailing prior to July 17, 1933."

It may not be possible to construe our wage-differential provision likewise, but there is no gainsaying that such a provision as contained in the Cotton Textile Code and which has since been adopted by most other codes in one form or another, comes closer to maintaining adequate and equitable wage differentials peculiar to operating conditions and geographical locations for plants comprising the industry.

(Memorandum)

MARCH 16, 1935.

To: W. A. Harriman.
From: Gustav Peck.
Subject: Report on Men's Clothing Code Authority.

On page 6 of the attached report mention is made of exhibits A, B, C, D, etc., but I do not find that these exhibits are so labeled. However, there is attached a series of letters and memoranda which probably are the exhibits referred to. Some of these are dated after the submission of the report itself.

GUSTAV PECK.

(Memorandum)

MARCH 18, 1935.

To: James Cope.
From: Robert K. Straus.
Subject: Investigation of Men's Clothing Code Authority.

You have asked me to state why the investigation conducted under my direction during the summer of 1934 of the Men's Clothing Code Authority was discontinued. The facts are as follows:

1. Complaint was received from Martin Popkin, director of the Industrial Recovery Association of Clothing Manufacturers, that the interpretation of article II(b) of the code and the enforcement of the interpretation by the code authority was discriminatory against members of a complainant's association.

2. A complaint was referred by me to Special Agent J. C. Howard, located at 45 Broadway, New York City. Mr. Howard reported to me on July 11, 1934.

3. I wish to emphasize certain statements of Mr. Howard's report.

a. Page 3: The code authority said that N. R. A. could have access to its records if I requested.

b. Page 4: Mr. Howard pointed out the history of the presentation of the code to N. R. A. and the relations that had existed between the two associations that presented codes.

c. Page 6: "An examination of this data I think will show that the code authority has not been able or willing to answer inquiries from members concerning the interpretation of II(b); that some interpretations have been sent only to a part of the trade. That this provision instead of being interpreted one way for all plants, has been interpreted many ways for many plants; that in all probability this provision is not susceptible of equitable enforcement.

"The data speaks for itself. Most of it is too technical for discussion in this letter."

4. I decided that inasmuch as this complaint involved a difficult and technical question and did not involve a simple question of malfeasance on the part of the code authority, it was not the function of my small staff to carry the investigation on further. I therefore referred to the deputy administrator who at that time I believe was Earl Howard. I did this because it had been my understanding with the Administrator that in directing the activities of the three special agents assigned to me, we were to focus our attention upon complaints which involved out-right dishonesty or racketeering on the part of code authorities and their agents. This particular investigation, it seemed to me at that time and it still seems to me upon reviewing the file, involved an administrative interpretation of a code and an enforcement based upon such interpretation of a code.

ROBERT K. STRAUS.

NATIONAL RECOVERY ADMINISTRATION

Reported from 45 Broadway, New York City region.
Date, July 11, 1934. Special agent.
Covering period ——. Approved by J. C. Howard.
Complaint against: Men's Clothing Industry Code Authority.
Complaint by: Industrial Recovery Association of Clothing Manufacturers. Martin E. Popkin, executive director.
Subject and brief: Interpretation and enforcement of article II (b) of code authority.

1. If article II (b) is susceptible of equitable enforcement.
2. If small enterprises and minorities are being oppressed.
3. If small enterprises and minorities are being coerced to join Amalgamated Clothing Workers of America.

Report.—With reference to the statement contained on page 6 of my letter to Mr. Straus of July 10 that further investigation may show coercion on the part of the Clothing Manufacturers Association, and the Amalgamated Clothing Workers and the code authority's authority to unionize closed shops and United Garment Workers shops under agreement with the Amalgamated Clothing Workers, attention is directed to the following data which is sent along with this report:

Letter of Martin E. Popkin of July 7, 1934.

My letter to Byres Gitchell, administrative member code authority, of July 9, 1934.

For balance of this report see page 2 and four pages of data which I received from Mr. Popkin today.

Note that the form letter signed by George L. Bell, executive director, is dated July 5, 1934, so it must have been printed prior to that time, and mailed to the various cities where Grief plants are located, for distribution July 5, the date of the Greif hearing in Washington, D. C.

Mr. Elmer Scheurer of the Block Co., Cincinnati, Ohio, picked up one of these letters today from a pile in the office of the code administrator, No. 51 Madison Avenue. Mr. Scheurer is of the opinion that an Amalgamated drive was planned in expectation of a favorable decision from the compliance board. Mr. Scheurer further said that the Block Co. has been working under agreement with the United Garment Workers for 30 years without a strike, and recent attempts have been made to organize his workers for the Amalgamated. This investigation is being continued and more data will be sent tomorrow.

Respectfully submitted.

JOHN C. HOWARD, *Special Agent.*

INDUSTRIAL RECOVERY ASSOCIATION OF
CLOTHING MANUFACTURERS,
New York, N. Y., July 7, 1934.

Mr. JOHN C. HOWARD,
Special Agent, National Recovery Administration, New York, N. Y.

DEAR SIR: In view of the raids which were made by so-called "investigators" of the Men's Clothing Code Authority on the plants of L. Greif & Bro., Inc., at the very time their case was being heard before the Advisory Council, Compliance Division, N. R. A., we feel it necessary to notify our members that no representative of the Men's Clothing Code Authority be allowed to enter any member plant until such time as our members have assurance that these so-called "inspectors" will confine themselves to the authority vested in them by the code, which consists solely of examination of records.

In this instance these raids were made by groups of men who attempted to force entrance to the plants and demanded the right to address employees.

In one instance it was necessary to close the plant because a riot occurred.

Where the inspectors were admitted, we understand that they addressed the help in an entirely improper manner. In other cases where they were not admitted, they demanded that employees present themselves for examination at hotels in the various towns.

These so-called "inspectors" handed out letters on the stationery of the code authority stating that they were empowered to act, and quoting various authorities. In one case, the letter used was an abstract from the Recovery Act and bore the signature of the President of the United States. Lists of questions on code authority stationery were also passed out to employees.

If it was necessary for the code authority to obtain such information as the inspectors demanded in support of the code authority allegations against the Greif Co., efforts to obtain such information could and should have been made prior to the time that the hearing was on.

At the hearing, the code authority represented a case claiming to have all the necessary data, and, therefore, these raids could have had only one purpose—to destroy the morale of the working force and to upset the manufacturing operations of the company.

Your immediate attention in this matter and action by the proper authorities will preclude the necessity of our taking drastic action immediately.

Cordially yours,

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS,
M. E. POPKIN, *Executive Director.*

NEW YORK CITY, *July 7, 1934.*

Mr. BYERS H. GITCHELL,
Administration Member Code Authority, Men's Clothing Industry, New York City.

DEAR MR. GITCHELL: In connection with the investigation concerning the interpretation and enforcement of article II B of the Code of Fair Competition of the Men's Clothing Industry about which I spoke to you on June 28, 1934, will you kindly obtain for me the following information:

How is the minimum for pieceworkers established? Is it on the basis of a fair average of all employees or otherwise?

It is conceivable that a minority might make less than the minimum when paid a piecework rate established on the basis of a fair average for all employees? In such a case are pieceworkers paid less than the minimum, or are they paid the minimum regardless of the amount of work done.

Are shops in New York paying actual amounts earned, or the minimum?

Your kindness in this matter will be appreciated.

Very truly yours,

JOHN C. HOWARD, *Special Agent.*

NATIONAL RECOVERY ADMINISTRATION,
New York City, July 10, 1934.

Mr. JOHN C. HOWARD,
National Recovery Administration,
New York City.

DEAR MR. HOWARD: Answering your letter of July 7, I shall be very glad to have this information compiled for you and I am today writing Mr. George L. Bell, executive director of the men's clothing industry asking that it be done.

Yours very truly,

B. H. GITCHELL,
Administration Member, Dress Code Authority.

NEW YORK CITY, *July 9, 1934.*

Mr. BYERS H. GITCHELL,
Administration Member Code Authority,
Men's Clothing Industry, New York City.

DEAR MR. GITCHELL: Report complaining of raids by inspectors of the code authority on the plants of L. Greif & Bros. Inc., on Thursday, July 5, 1934, indicate that there was considerable trouble of one kind or another in connection with these so-called "raids." At one plant it was reported that a riot occurred, and it was necessary to close the plant. Will you kindly inquire and let me know at your earliest convenience the following:

1. Who was sent, and where? What regular employees of the code authority, and what other parties if any?
2. As to what instructions were issued and by whom, the time when these so-called "raids" were to be made, information desired, and how it was sought to be obtained.

The complaints which have been received concerning these so-called "raids" and the manner in which they were conducted create a doubt that these parties were acting under orders of the code authority, and indicate the possibility that these parties might have falsely represented themselves to be code inspectors.

To silence these complaints if they are without foundation, I would appreciate a prompt reply to this letter, giving the full and specific information called for above.

This information, as I had explained to you, is for Mr. Robert K. Straus, special assistant to the Administrator, and is in connection with the investigation which is being made under his direction with reference to the interpretation and enforcement of article II (b) of the code.

Very truly yours,

JOHN C. HOWARD, *Special Agent.*

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., July 11, 1934.

Mr. JOHN C. HOWARD,
Special Agent National Recovery Administration, New York City.

DEAR MR. HOWARD: Answering your letter of July 9, I am requesting that the Men's Clothing Code Authority prepare a report containing the information you require.

In order not to delay this, I am asking that they send the report directly to you with a copy to me for my information.

Yours very truly,

B. H. GITCHELL,
Administration Member Men's Clothing Code Authority.

NEW YORK, N. Y., *July 12, 1934.*

Mr. BYERS H. GITCHELL,
Administration Member Code Authority,
Men's Clothing Industry, New York, N. Y.

DEAR MR. GITCHELL: Please accept my thanks for your kind letters of July 10 and 11, in reply to mine of the 7th and 9th asking certain information pertaining to the enforcement of the Men's Clothing Code.

Further, with reference to my letter of the 9th instant could I trouble you to get for me a list with the names and addresses of all outside employees of the code authority as of July 5, 1934, whose duty it was to obtain information from manufacturing plants, and indicate if any of these parties were temporarily employed and for what purpose.

I shall appreciate your further cooperation in this matter.

Very truly yours,

JOHN C. HOWARD, *Special Agent.*

[Telegram]

PHILADELPHIA, *July 6, 1934.*

E. H. HOLTHAUS,
Greif & Co., Waynesboro, Pa.:

This is to inform you that Beatrice Bisno and H. Feiner at present in Waynesboro are the duly authorized representatives of the Men's Clothing Code Authority and as such have full authority to investigate and act on complaint and violations arising under Men's Clothing Code under which you operate. The Federal Director of Compliance in Pennsylvania requests that you give these representatives of the code authority your fullest cooperation in settling alleged complaint against your firm arising under the above-mentioned code. Your failure to do so will make it necessary for this office to investigate.

HARRY SORENSEN,
Executive Assistant, N. R. A.

EXECUTIVE ORDER

PRESCRIBING A REGULATION PROHIBITING DISMISSAL OF EMPLOYEES FOR REPORTING ALLEGED VIOLATIONS OF CODE OF FAIR COMPETITION

By virtue of and pursuant to the authority vested in me under title I of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195), and in order to effectuate the purposes of said title, I hereby prescribe the following rule and regulation:

No employer subject to a code of fair competition approved under said title shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of any code of fair competition approved under said title.

All persons are hereby informed that section 10 (a) of the National Industrial Recovery Act prescribes a fine not to exceed five hundred dollars ($500) or imprisonment not to exceed six (6) months, or both, for the violation of any rule or regulation prescribed under the authority of said section 10 (a).

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *May 15, 1934.*

MEN'S CLOTHING CODE AUTHORITY,
New York.

CARROLL COAT SHOP

1. Name?
2. Address?
3. Were you employed by L. Greif & Bro., Inc., in the week of July 1, 1933?

(If the answer is that the worker was not employed by L. Greif & Bro., Inc., in the week of July 1, 1933, in any shop, the witness is not required to answer any further questions.)

4. In which shop?
5. How long were you employed by the firm?
6. In the week of July 1, 1933, when did you begin work in the morning?
7. In the week of July 1, 1933, when did you stop work for the day, week days?_____ Saturdays?_____
8. In the week of July 1, 1933, how long did you have for lunch?
9. In the week of July 1, 1933, what were the prevailing work hours?
10. In the week of July 1, 1933, what operations did you perform?
11. In the week of July 1, 1933, were you paid on a piece- or week-work basis?
12. In the week of July 1, 1933, if on a week-work basis, what were your wages?

MEN'S CLOTHING CODE AUTHORITY,
New York, July 5, 1934.

You are directed to appear at Stonewall Jackson Hotel, room 412, at 5:30 p. m. today, in the matter of the investigation of the wage and hour provisions of the Code of Fair Competition for the Men's Clothing Industry and the matter of observance of such provisions by the firm of L. Greif & Bro., Inc.

MEN'S CLOTHING CODE AUTHORITY,
GEORGE L. BELL, *Executive Director.*

WESTMINISTER, MD., *July 5, 1934.*

In pursuance of the authority vested in me by the Men's Clothing Code Authority I am about to investigate the Carroll Coat Shop of L. Greif & Bro., Inc.

I hereby state that Mr. Mannino has told me that he has not received permission from Mr. Irving Greif to allow me to make this investigation, and I have instructed him that I am making this investigation in pursuance of the law.

HERBERT FERSTER.

NATIONAL RECOVERY ADMINISTRATION

Reported from 45 Broadway, New York City region.
Date, July 12, 1934. Special Agent John C. Howard.
Covering period July 10 and 11. Approved by——.
Complaint against: Men's Clothing Code Authority.
Complaint by: Industrial Recovery Association of Clothing Manufacturers, Martin E. Popkin, executive director.
Subject and brief: Interpretation and enforcement of article II (b) of code authority.

1. If article II (b) is susceptible of equitable enforcement.
2. If small enterprises and minorities are being oppressed.
3. If small enterprises and minorities are being coerced to join Amalgamated Clothing Workers of America.

Report.—Interviews with Mr. A. S. Bursh, 110 Fifth Avenue, and Mr. Martin E. Popkin, 51 Madison Avenue, New York City.

Copies.—Mr. Robert A. Straus, special assistant to General Johnson (2); Mrs. Anna M. Rosenberg, assistant to State director (1); New York office; Chicago office.

Send letter to Mr. Byers H. Gitchell, administration member, requesting a list with the names and addresses of all outside employees as of July 5, 1934, whose duty it was to obtain information from the manufacturers' plants, and indicate if any of these parties were temporarily employed and for what purpose.

On information received from a confidential source, that Mr. A. S. Bursh, of 110 Fifth Avenue, New York City, could give me definite information as to the employees of the code authority who engaged in so-called "raids" on July 5. I interviewed Mr. Bursh at his office, 110 Fifth Avenue, on July 11, 1934. A. S. Bursh Co. manufacturers of boy's suits and clothes, 110 Fifth Avenue, New York City, Mr. Bursh stated as follows:

The New York Clothiers Exchange was organized by Sidney Hillman. Before the code you had to belong, or you would have trouble with the union. Sidney Hillman went to Washington, and used his influence to write the code for the Men's Clothing Industry. Some of the higher-class manufacturers, such as Asinoff and Curlee, would not join Hillman's association, and organized the Industrial Recovery Association of Clothing Manufacturers. The inspectors of the code authority who are sent out to check books are all ex-union officials of the Amalgamated Clothing Workers, or sons or relatives of these officials.

Mr. Bursh stated the following with reference to labels which are purchased from the code authority. A manufacturer of men's clothing doing a business of $1,000,000 a year would manufacture approximately 25,000 suits and 15,000 overcoats. Three labels would be required for the suit—1 for the pants, 1 for the coat and 1 for the vest, and 1 for each overcoat manufactured. This would mean 75,000 labels for the suits and 15,000 for the overcoats. The code authority sells these labels at $5 a thousand. The cost of these labels to the manufacturers of men's clothing and overcoats would be $450. Manufacturers of boy's suits

which sell for from $3.50 to $4.50 a suit would require 750,000 labels at a cost of $3,750. I checked this information with Mr. Popkin and he said the labels which are sold by the code authority could be purchased in quantities for 60 cents a thousand. Last year the receipts from the sales of N. R. A. labels were approximately $400,000.

In the Daily News Record of October 31, 1933, the full text of the agreement between United Garment Workers of America, and the Amalgamated Clothing Workers of America, clarifying the respective jurisdictions of both of these organizations and paving the way for the latter organization's entrance into the American Federation of Labor, is set out in full. This agreement was first called to my attention by Mr. Elmer Scheurer, of the Block Co., Cincinnati, Ohio, in reference to his statement to me that efforts had been made by the Amalgamated to organize his workers.

Mr. Martin E. Popkin has requested that I report the following information relative to the kind and character of manufacturers, members of the Industrial Recovery Association of Clothing Manufacturers:

August 31, 1933, all of the members of the Industrial Recovery Association of Clothing Manufacturers were ordered to sign the President's Reemployment Agreement, limiting working hours to 40 hours per week. Under the code it is 36. The Amalgamated group continued to work 44 to 50 hours a week until September 11, 1933, the effective date of the code.

Seventy members of the Industrial Recovery Association of Clothing Manufacturers have a yearly pay roll of more than $25,000,000.

Investigation in this case is being continued.

Respectfully submitted.

JOHN C. HOWARD, *Special Agent.*

NEW YORK CITY, *July 14, 1934.*
[July 12 and 13, John C. Howard.]

MEN'S CLOTHING INDUSTRY CODE AUTHORITY

INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS

Interpretation and enforcement of article II (b) of code authority.

1. If article II (b) is susceptible of equitable enforcement.
2. If small enterprises and minorities are being oppressed.
3. If small enterprises and minorities are being coerced to join Amalgamated Clothing Workers of America.

Interview with Martin E. Popkin, David A. Drechsler, and Julius Schild.

[Mr. Robert K. Straus, July 14, 1934.]

Received message from Mr. Robert K. Straus, Washington, D. C., to phone Mr. David A. Drechsler, counsel for Men's Clothing Code Authority, relative to report of raids on Greif plants. I phoned Mr. Drechsler's office several times during the day, and did not succeed in getting in touch with him, but left a memorandum that I had called and that I wished to talk with him concerning a matter about which Mr. Straus had phoned me from Washington.

The following day I spoke to Mr. Drechsler and asked him if he was speaking about my letter of July 9, 1934, which was sent to Mr. Byers H. Gitchell, administration member of the code authority. He said "yes". I asked Mr. Drechsler if he had a copy of the letter before him, and he said it was not necessary to get it as he knew what was in the letter, and he then started to deliver a lecture to me.

I finally was able to explain to Mr. Drechsler that the letter I sent to Mr. Gitchell was in reference to a complaint which I had received, and that in the first paragraph of my letter to Mr. Gitchell I said, "Report complaining of raids by the inspectors of the code authority on the plants of L. Greif & Bro., Inc., on Thursday, July 5", etc., that this was a statement made to me which I was repeating in the same words in which it was made to me. That in referring to this report in the fourth paragraph of my letter, I said, "the complaints which have been received concerning these so-called 'raids', and the manner in which they were made", etc.

This did not satisfy Mr. Drechsler, and he said that he remembered the letter perfectly, and I had accused the code authority of making raids on the Greif

plants. He said Mr. Gitchell's letter had been referred to him. He finally wound up by saying: "You have addressed a letter to Mr. Gitchell rather than to the code authority, and I certainly will not dignify it by making a reply to it, either to Mr. Gitchell or to you." Later in the day Mr. Drechsler phoned me, and said he had looked over my letter, and I did refer to the raids as "so-called raids", and that he had been a little hasty in his criticisms in the morning. Mr. Drechsler took the position that the code authority was a quasi-governmental body, and therefore, my complaints received against them should be taken up first with the code authority. I explained to Mr. Drechsler that this was exactly what I had done; that I was authorized to make investigations without seeing the code authority at all, but that in this particular case I first called on Mr. Gitchell, the administration member, and was referred by him to Mr. Bell, and that I called to see Mr. Bell and did not receive from Mr. Bell sufficient data to either approve or disprove the charges which had been made. That Mr. Bell refused to permit an inspection of those records without a request from Mr. Straus, and qualified this by saying he could not answer this question definitely at that time. I have had a very pleasant conversation with Mr. Drechsler after this, and he did not say definitely, but intimated that a request from Mr. Straus would not be refused. I would be just as well satisfied if I receive answers to my letters asking information from the code authority before getting access to their files. I do, however, expect that this information will be delayed as long as possible.

Sent letter to Mr. Byers H. Gitchell, dated July 14,1934, requesting additional data. (See copy of letter attached herewith).

Attached to this report is newspaper clipping from the New York Times of July 12 relative to Plant Shut Down on Wage Decree, in the Greif case.

I received from Mr. Popkin, of the Industrial Recovery Association of Clothing Manufacturers, copy of Application of Industrial Recovery Association of Clothing Manufacturers for Leave to Appear as Amicus Curiae, and Other Relief in the Case of L. Greif & Bro., Inc. copy of report of meeting of Men's Clothing Code Authority, 51 Madison Avenue, New York City, June 12, 1934, in the matter of hearing on the case of the Block Co., Cincinnati, Ohio, and hearing of the Block Co. before the committee under section II (d) of the Men's Clothing Code of July 9, 1934. These records will be examined in connection with exhibit I (b). (See p. 6 of my letter to Mr. Straus, dated July 10, 1934.)

I interviewed Mr. Julius Schild of the Heldmann-Schild, Inc., Cincinnati, Ohio, on July 13, 1934. Mr. Schild said that his company and the Seinscheimer Co. of Cincinnati, had received bills but the Nash Co. and the Globe Co. of Cincinnati, which are not members of the Industrial Recovery Association, had not received any bills. He came to see Mr. Popkin about resigning from the Industrial Recovery Association. Mr. Popkin later told me he had lost 30 members and 10,000 employees on account of the bills sent to his members under II (b). That he had lost his entire membership in the Buffalo market.

On page four of letter of July 10, 1934 to Mr. Straus the employee members of the Industrial Recovery Association of Clothing Manufacturers is given as 33,000. A loss of 10,000 leaves 23,000. On the basis of 106,000 workers in the industry 23,000 is 21 percent. This is at variance with the statement made to me by Mr. Drechsler that those complaining against the code authority was less than 5 percent, about 2 percent.

Heldmann-Schild, Inc., received bills from the code authority of $15,000, $10,000 and $9,500. The letter sent with the last bills said "disregard other bills."

Respectfully submitted.

JOHN C. HOWARD, *Special Agent.*

NEW YORK, N. Y., *July 14, 1934.*

Mr. BYERS H. GITCHELL,
Administration Member Men's Clothing Industry,
New York, N. Y.

DEAR MR. GITCHELL: Further in connection with the investigation concerning the interpretation and enforcement of article II (b) of the Code of Fair Competition of the Men's Clothing Industry, I am in receipt of complaints against the code authority to the effect that bills in different amounts are being rendered under II (b) of the code.

To ascertain if there is any foundation for these complaints, will you please procure for me a list of manufacturers receiving bills under II (b) with amounts and dates of bills rendered, and if bills in different amounts have been sent to

any of these manufacturers, the dates of such bills and the reason for sending two or more sets of bills. Also indicate the status of all these bills; that is to say if paid, not paid but not protested, protested and reasons for, and if appealed to II (d) committee.

Yours very truly,

JOHN C. HOWARD, *Special Agent.*

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., July 16, 1934.

Mr. JOHN C. HOWARD,
Special Agent, National Recovery Administration,
New York City.

DEAR MR. HOWARD: I am in receipt of your letter of June 14 asking for certain additional information regarding complaints against the Men's Clothing Code Authority regarding bills.

I was asking Mr. Bell, executive director of the Clothing Code Authority to furnish this information direct to you with a copy to me for my information.

Yours very truly,

B. H. GITCHELL,
Administration Member, Men's Clothing Code Authority.

NATIONAL RECOVERY ADMINISTRATION

Reported from 45 Broadway, New York City region.
Date, July 19, 1934. Special Agent John C. Howard.
Covering period July 17 and July 18. Approved by——.
Complaint against: Men's Clothing Industry Code Authority.
Complaint by: Industrial Recovery Association of Clothing Manufacturers.
Subject and brief: Interpretation and enforcement of article II (b).

1. If article II (b) is susceptible of equitable enforcement.
2. If small enterprises and minorities are being oppressed.
3. If small enterprises and minorities are being coerced.

File turned over to Mr. Byers H. Gitchell, administration member of the code authority.

Mr. Robert K. Straus, special assistant to Administrator, N. R. A., Washington, D. C.; Mrs. Anna M. Rosenberg, executive assistant State compliance director, N. R. A., New York City.

Pursuant to instructions from Mrs. Anna H. Rosenberg, executive assistant State compliance director, and after conversation with Mr. Robert K. Straus special assistant to the Administrator, on July 18, 1934, the file in this case is being turned over to Mr. Byers H. Gitchell, and in obedience to instructions received from Mrs. Rosenberg, I will work under Mr. Gitchell's direction.

Respectfully submitted.

JOHN C. HOWARD, *Special Agent.*

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., July 18, 1934.

Mr. JOHN C. HOWARD,
Office of State N. R. A., Compliance Director, New York City.

DEAR MR. HOWARD: With reference to your report on the men's clothing investigation, I have talked to Mrs. Rosenberg, and she tells me that she has put you in contact with Mr. Gitchell. Please be guided by her advice in this matter. Anything she says will be O. K. with me.

Sincerely yours,

ROBERT K. STRAUS,
Special Assistant to the Administrator.

SEPTEMBER 17, 1934.

Mrs. ANNA L. ROSENBERG,
Acting Compliance Director, N. R. A., New York, N. Y.

DEAR MRS. ROSENBERG: At a meeting of the Men's Clothing Code Authority, Friday, September 14, it was reported that Mr. M. D. Vincent, by appointment of Robert K. Straus, had completed an investigation of the said code authority, on or about August 30, and had reported that the code authority was administered impartially and without discrimination.

I note by this morning's Daily News Record that the said Mr. Vincent, formerly assistant deputy administrator of the Textile Division of the N. R. A., has been appointed Federal agent in charge of the Men's Clothing Code, to succeed Mr. John R. Bescroft.

Cordially yours,

INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS.
———— ————, *Executive Director.*

NATIONAL RECOVERY ADMINISTRATION.

Reported from New York. Region New York.
Date November 26, 1934. Special agent——.
Covering period July 18, November 26, 1934. Approved by——.
Complaint against: Men's Clothing Industry Code Authority.
Complaint by: Industrial Recovery Association of Clothing Manufacturers.
Subject and brief: Interpretation and enforcement of article II (b).

1. If article II (b) is susceptible of equitable enforcement.
2. If small enterprises and minorities are being oppressed.
3. If small enterprises and minorities are being coerced.

Report.—Case closed by direction of Mr. Byres H. Gitchell.
Recommendation.—Refer: 2–3. Confidential—not for public inspection.
Region file no.—cast status continued.
District of Columbia file no.—pending; closed.
Copies to Mrs. Rosenberg, executive assistant. State compliance director (1). Mr. Cope, assistant administrative officer (2). New York office, (2).

By direction of Mrs. Anna M. Rosenberg, executive assistant State compliance director which was confirmed by letter from Robert K. Straus, special assistant to the Administrator July 18, the file in this case was turned over to Mr. Byers H. Gitchell, administrative member of code authority with instructions to complete the investigation under Mr. Gitchell's direction.

November 23, Mr. Gitchell said I could mark this case closed.

Respectfully submitted.

JOHN C. HOWARD, *Special Agent.*

The CHAIRMAN. I wish you would go into that situation and explain to the committee any matters that pertain to it.

Mr. VINCENT. I shall be very glad to, Senator.

After the Greif firm had brought action in the district court in Maryland to enjoin the code authority and the administration from suspending its labels, I was requested upon behalf of Division Administrator Rosenblatt, upon the recommendation of Mr. Gitchell, to examine into the code authority procedure in the Greif noncompliance case. I did so.

I checked the original records relating to the so-called "2 (b) investigations" by the code authority. May I say that the code authority began its investigations market by market—individuals were not singled out—beginning from in December of 1933.

None of those investigations, however, were completed, Senator, until January 1934. They took the markets of Milwaukee, Chicago, Cleveland, Cincinnati, and on east, Rochester, New York, Boston, Philadelphia, and in April they reached the Baltimore market, and the Greif plants were among those that were inspected by the ex-

aminers of the code authority. There were 23 inspectors, Senator, sent to inspect eight plants. The investigation that I made indicated nothing in the nature of a raid. At one of the plants the management refused admittance to the inspectors.

The CHAIRMAN. They were all Greif plants?

Mr. VINCENT. The eight plants were all Greif plants. At one of the others, the inspectors were also delayed for a brief period. After 2 days the counsel for the Greif firm authorized the inspectors to be admitted to this plant to which I told you they were at first denied admission.

They found—to indicate to you the situation confronting the code authority—that the Greif pay-roll records had been destroyed. This should be considered in relation to the fact that the code provided that the precode wage rates should be examined by the code authority to determine the amount necessary to maintain the differentials in the higher paid classes of workers under the provision 2 (b) of the code.

Senator KING. That is to say that the wages were to be determined not upon economic and industrial conditions at the time the code was in effect but to go back into precode conditions?

Mr. VINCENT. To determine the average wage of the lowest paid class in July precode, Senator.

Senator KING. Did you not go back to 1927, 1928, and 1929?

Mr. VINCENT. No; the code itself provided this method; July 1933, preceding the code. The rates at that time paid, the average rates to the lowest class, for the purpose of determining the differentials to be maintained under 2 (b).

To continue with the Greif case, Senator Harrison, I made an examination into the record of the hearing that was held July 5 before the Compliance Division, in addition to my examination of the code authority records, and I have noted the statement of facts made by my good friend Colonel Curlee during his testimony before the committee.

The facts briefly are that the Compliance Division found the Greif concern in violation of 2 (b) as charged by the code authority to the extent of approximately $35,000. For your information, Senator, in addition to that, in that hearing, counsel for the Greif concern admitted the accuracy of those figures but questioned the validity and the applicability of the 2 (b) provision of the code under which the charge of violation was made.

Senator KING. Because of its uncertainty?

Mr. VINCENT. That is their claim, that it was uncertain and ambiguous.

Senator KING. Because of the Herwitz formula?

Mr. VINCENT. Yes. I will comment on that later, if I may.

Senator KING. All right.

Senator BARKLEY. Let me ask you a question there. What did this $35,000 represent?

Mr. VINCENT. It represented the deficiency of wages due to workers for the period covered by the investigation.

Senator BARKLEY. In other words, it has been stated in the press, as I understand it, that this $35,000 was a fine assessed against this concern?

Mr. VINCENT. Not at all. It was wages found by the code authority to be due the workers in this plant.

Senator BARKLEY. In other words, your contention was and is that it represented the amount by which their employees had been underpaid?

Mr. VINCENT. Exactly.

Senator BARKLEY. Under the code?

Mr. VINCENT. Exactly, Senator.

Senator BARKLEY. What happened about that?

Mr. VINCENT. The Greif firm asked for a further hearing on the subject, and then by agreement between the representatives of Greif and the code authority and the Compliance Division the matter was referred to Mr. Blackwell Smith, the assistant counsel of the N. R. A., and to the Chief of the Planning and Research Division for fact finding, and they made a thorough investigation and made a report, a fact-finding report.

Upon the completion of that fact finding, Senator, the Greif concern entered into a written agreement, a photostatic copy of which I have before me, dated August 31, 1934. It is signed by the executive director of the Men's Clothing Code Authority, by Mr. Leon Henderson, economic adviser to the N. R. A., and by Weinberg & Sweeten, counsel for the Greif concern in which they agreed to restore the piecework rates which they had set aside after the adoption of the code, to discontinue the bonus system, to advance the piecework rates 7 percent, and to pay any deficiency that would have been due the workers had these rates been in effect from June 9.

In December 1934, pursuant to that written agreement, the Greif concern paid to its workers back wages dating back to June 9, 1934, the sum of $24,600 and odd. In consideration for that settlement and pursuant to the contract I have mentioned, the code authority agreed to dismiss the charge that it had made.

For the use of the committee, I will hand you the photostatic copy of that agreement, Senator.

The CHAIRMAN. That may be put into the record.

(The agreement mentioned is as follows:)

AUGUST 31, 1934.

MEMORANDUM OF AGREEMENT

The undersigned have this day agreed as follows:

1. L. Greif & Bro., Inc. (hereinafter referred to as Greif) will replace its bonus system of wage payments with a piece-rate system.

2. Said piece-rate system shall be developed with the assistance and approval of the economic adviser of N. R. A., on the following basis:

A. The direct labor costs of three types of coat, customarily manufactured in the Greif-Carroll plant, are established as follows:

(1) Standard custom, $2.31; (2) stock, $2.53; (3) gold label, $2.63.

B. The direct labor costs of stock trousers are established at 59 cents. The direct labor costs of stock vests are established at 52 cents, which shall include the cost of machine buttonholes.

C. The direct labor costs of summer clothing and overcoats shall be established along the same basis as the costs in A and B, with the approval of the economic adviser of the N. R. A.

D. Seven percent shall be added to the direct labor costs as established in A, B, and C, and the total direct labor costs of each garment thus determined shall be broken down into piece rates to be prepared with the assistance and approval of the economic adviser. A list of the operations now entering into the manufacture of each of the garments referred to in A and B are attached hereto. A specification for each separate operation for which piece rates will be developed shall be prepared with the assistance and approval of the economic adviser of the N. R. A.

E. The piece rates established as provided in D shall apply in any Greif plant where the identical operation may hereafter be performed. Where operations other than those included in the specifications devised as provided in D are performed, piece rates shall be arrived at for each of such operations on the basis of the cost per unit thereof (established on the same basis as the direct labor costs referred to in A and B) plus 7 percent.

F. Moderate changes in individual piece rates established pursuant to D and E are to be permitted without decreasing the total cost per garment as established hereunder.

G. Piece rates established as provided herein shall be made effective as of and from June 9, 1934, and the difference between the amounts actually earned by the Greif employees under the bonus system and the amounts which would have been earned had the said piece rates been in effect shall be distributed to such employees as may be entitled thereto by Greif. The amounts to be paid to the several Greif employees shall be computed by Greif with the assistance and the approval of the economic adviser of the N. R. A.

3. Greif has entered into the stipulations, copy of which is annexed hereto, providing for dismissal of its suit brought in the District Court for the District of Maryland against Bernard J. Flynn et al.

4. N. R. A. will withdraw its direction to the code authority to refuse the issuance of N. R. A. labels to Greif.

5. The code authority hereby abandons all pending claims against Greif of infractions or violations of the Men's Clothing Code.

6. The code authority by its signature hereto agrees to the provisions hereof.

WEINBERG & SWEETEN,
By LEONARD WEINBERG,
Counsel for L. Greif & Bro., Inc.
GEORGE L. BELL,
For the Men's Clothing Code Authority.
LEON HENDERSON,
Economic Adviser of the N. R. A.

Senator BARKLEY. Was that agreement understood to be, on the part of the code authority and the N. R. A., construed as a substantial compliance ex post facto with the code?

Mr. VINCENT. That was the effect of it, Senator. The contract finally makes what you might call an arbitrator or arbitrators of Mr. Henderson and Mr. Blackwell Smith, and the code authority is a party to that agreement; and upon compliance with it, the code authority dismissed the charges, so that upon the payment of the $24,600-odd by the Greif concern, that was taken as putting them in compliance.

The CHAIRMAN. As to the statement about the inspectors that went to these eight plants and the allegation here that they addressed the men in some of the plants, what have you to say about that?

Mr. VINCENT. I understand that they did address some of the employees, but not under circumstances that interfered with the operation of the plant, Senator.

The CHAIRMAN. What was the object of their addressing the employees?

Mr. VINCENT. To inform them of the purpose of the investigation, and I think at this point it would be enlightening if I gave to you some photostatic copies of letters received by the code authority which indicate the conditions which confronted not only the workers in the plant but the code authority when it went to make the inspection.

Please keep in mind that they found that the precode records had been destroyed, notwithstanding the code provision for the use of those records; and the officials of the Greif concern were fully informed of that fact, because they were personally present during the code hearings.

The CHAIRMAN. Were the records destroyed in all of their plants?

Mr. VINCENT. I cannot answer that, Senator. They had 10 plants, and only 8 of them were inspected at that time, and my investigation was limited to that inspection.

The CHAIRMAN. But in those eight plants, the records of the pre-code days as to wages were destroyed?

Mr. VINCENT. That is the information given me.

I am going to read to you a photostatic letter received by the code authority in an envelop bearing a postmark date of July 9, 1934. It is addressed to the code authority at its New York City address.

Senator KING. By whom?

Mr. VINCENT. The name is deleted for the protection of the worker. It was deleted by the Men's Clothing Code Authority when this photostatic copy was made, Senator. The reasons for that will appear when the letter is read.

The letter is as follows [reading]:

GENTLEMEN: As an employee of the Staunton Manufacturing Co. of Staunton, Va., I want personally to offer my sincere apology for the attitude I took toward your representatives which were at the doors of the manufacturing plant on last Thursday.

Factory work is something new for me, as I have always worked in an office and do not know the ways and means of the employee's side, but am learning my lesson day by day. I gave up office work a few years ago on account of illness in my home, and in order to make a livelihood. I took up the sewing of coats—that is, finishing them—getting for my work something like 15 cents a coat.

Last July, I believe, the N. R. A. went into effect, but we home workers did not have the advantage of this code; but sometime in January of this year I was called to the factory to do this kind of work and was given 28 cents an hour, 7 hours and a quarter a day, for 8 weeks. We were experienced sewers then, but of course not quite as swift as we have since become, but in a week or so we were able to do about as much as we are now, for the work is rated so high that at the present time I am only able to make my average by making one coat before the regular time to work in the morning, and only take a few minutes for lunch. When my 8 weeks were up, before starting on the $14.40 per week, I went to the manager and asked him what was the matter—was it the fault of the home workers or they had gaged the work too high; and he replied to me that "we southern women did not know how to work fast." I told him that I used up all the strength and energy I had and gave him every minute of my time and yet could not make coats as fast as they wanted them. I still cannot.

This morning when I went in to work and talked to the different workers, then I knew could your representatives arrived on the scene they would have had a room full and overflowing at their meeting; but we were made to believe all day that the folks standing around were only union men and strikers, or something to that effect; and because of this trouble once before, the girls were afraid to say anything. I passed out of the building and was not interviewed by anyone and quietly went on home and did not know of the meeting at 5:30 until the next morning, and sorry I did not attend same.

I simply spoke of my operation, but suppose it refers to most operations, as it seems no one can scarcely get out an average; and we thought that the N. R. A. meant more help, not the same help and more work.

What I really wanted to say was how sorry that the N. R. A. men, in a good cause, came and went away, and I failed to know just what it all meant until too late.

Again accept my apology, and kindly keep my name confidential, as I must have work.

Very truly,

_____.

Another letter, Senator, which I believe is equally pertinent as disclosing the circumstances under which the code authority inspectors were compelled to proceed to their work—this is likewise a photo-

static copy not only of the letter but of the envelop and the postmark in which it came. The letter is addressed to Mr. Stephen A. Mayo, Men's Clothing Code Authority, 51 Madison Avenue, New York, and is as follows:

Thought you would be interested in knowing that the managers of the two shops here in Staunton have a plan whereby they are trying to beat you, to wit, my wife says that they are expecting to pass a paper to each worker (she thinks not later than tomorrow) and wants them to sign it under threat of being fired. This paper is supposed to state that each worker who signs it is fully satisfied with her job, her pay, and so forth.

Hope this will mean something to you and that these crooks can be brought to time.

Sincerely yours.

That name, Senator, is also deleted because it is obvious from it that his wife is a worker in one of those plants.

I think I am not unfair when I say of the so-called "raid" described by Mr. Holmes, that my investigation disclosed no raid except the raid made by the company upon the pay envelops of the workers in that plant; and as I said, some $24,000 of that money has been paid under the contract I have presented here. It represented amounts due workers ranging all the way from $2 each to more than $200 in some instances.

Senator KING. May I ask you just a question here?

Mr. VINCENT. Yes, Senator.

Senator KING. Under whose direction did Mr. Howard make the investigation and report which Senator Nye has received?

Mr. VINCENT. I am unable to answer that, I did not know of the Howard report until just after I had begun the investigation which I made.

Senator KING. I think the Howard report—I have not had time to examine it because it was just handed to me a moment ago by Senator Harrison—but I think that it states that Mr. Howard was a representative of the Department of Justice, as I recall?

Mr. VINCENT. I think he was loaned to the National Recovery Administration from the Department of Justice.

Senator KING. And he made the investigation under the direction of—Mr. Straus, is it?

Mr. VINCENT. Yes.

Senator KING. Mr. Straus?

Mr. VINCENT. Yes; I remember hearing that is true.

Senator KING. Who is Mr. Straus?

Mr. VINCENT. Mr. Straus was an official of the National Recovery Administration.

Senator KING. What position did he occupy?

Mr. VINCENT. He was on the administrative officers' staff. I cannot tell from memory. I am not able from memory to give you his exact title.

Senator KING. Then Mr. Howard was making the investigation at the request of the N. R. A.?

Mr. VINCENT. That is my understanding; yes.

Senator KING. And he made his report I assume— I have not read it—to the N. R. A.?

Mr. VINCENT. I think he made it to Mr. Straus. I subsequently read the report.

Senator BARKLEY. Did the payment of the $24,000 back wages that you speak of apply only to the Staunton plant?

Mr. VINCENT. No; it applied to the eight plants dating back to June 9, 1934.

Senator BARKLEY. Where are those plants located?

Mr. VINCENT. Staunton, Va., some of them in Pennsylvania, one of them I think in Baltimore, and I cannot from memory give you the exact location of each of them.

Senator COSTIGAN. Was this the case, Mr. Vincent, about which Colonel Curlee testified?

Mr. VINCENT. Yes.

Senator COSTIGAN. In the court proceeding in which he appeared as amicus curiae?

Mr. VINCENT. That proceeding was the proceeding before the Compliance Division of the N. R. A. in the case which arose from the charge made by the code authority that the Greif concern had violated the provisions of 2 (b). It was following that hearing that by agreement the case was referred to Mr. Leon Henderson of the Research and Planning Division and Mr. Blackwell Smith for a fact-finding report. After that fact-finding report the contract that I have referred to was entered into and signed by Greif.

Senator KING. Senator, were you referring to the proceeding before Judge Coleman, the Federal judge in Baltimore?

Senator COSTIGAN. I do not recall the name of the judge.

Mr. VINCENT. It was the same case. It involved the same charge, Senator, and involved the label question, and may I add at this point——

Senator KING (interrupting). Just let me ask you this. There was an action brought before Judge Coleman?

Mr. VINCENT. Yes.

Senator KING. And the hearing was had, and Judge Coleman, notwithstanding the large representation there of the various Federal organizations, continued the injunction?

Mr. VINCENT. I think that is true. I never examined the proceedings, Senator, in that case.

Senator KING. There was a hearing?

Mr. VINCENT. I understand there was, as Colonel Curlee testified here.

Senator KING. And the decision of the judge was read into the record the other day?

Mr. VINCENT. I understand so, yes.

Senator KING. All right.

Mr. VINCENT. May I add that the Men's Clothing Code Authority did not suspend labels until directed to by the Compliance Division of the N. R. A., and that in no single instance has that code authority suspended labels of members of the industry except upon direction of the Compliance Division of the N. R. A. after it had found the industry member in violation of the wage or hours provision of the code. And that is true, as I said, in the Greif case.

The CHAIRMAN. Mr. Vincent, I think the committee would like to get your reaction as to the testimony of Mr. Curlee with reference to this representation of 5 upon the part of 1 of the organizations interested in the men's clothing manufacturing, and this other organization that had a committee of 10, and that 1 organization

selected the representatives upon the other organization to serve in the administration of the code.

Mr. VINCENT. Senator Harrison, I have read Deputy Administrator Lindsey Rogers report in that case, I have read the record of the original code hearings. I think the Administrator's report is a substantially accurate report of his findings that the U. S. A. Association represented about 65 to 75 percent of the industry and that the Industrial Recovery Association represented by Mr. Curlee, represented if not all, a substantial part of the minority. At the code hearings, Colonel Curlee's organization represented 111 members of the industry.

The CHAIRMAN. What is your reaction as to the propriety of one of those organizations in the administration of the code dictating the representatives from the other organization in the administration of the code?

Senator KING. Or those who did not belong to any organization?

The CHAIRMAN. I can say to you quite frankly that my impression is that there ought to be a fair representation on it, and that each organization should be permitted to select their own representatives. But I want to be clear on that proposition.

Mr. VINCENT. I shall be very glad to go into that. I think Colonel Curlee's statement was less than a complete statement of the facts. Under the act, of course, an organization to be entitled to propose a code and to elect the code authority, must be representative. The deputy administrator in that instance found the U. S. A. Association representative of the industry, and obviously proceeding upon the theory that the representative group had the right to name the members of the code authority——

Senator KING (interrupting). Regardless of the minority?

Mr. VINCENT. No. That was provided to the extent of giving them 10 members. Then it was provided that there should be an additional five selected who are not members of the U. S. A. Association.

At this point it is necessary to explain that Mr. Mark Cresap, now the chairman of the code authority and the then president of the U. S. A. Association, sent a letter, copy of which I have here and shall be very glad to submit to your committee, to each of the 111 members of the so-called "Industrial Recovery Association", inviting them to name members upon the code authority. Nine of the 111 members responded. They nominated Colonel Curlee, Mr. Leonard Greif, Mr. Schoeneman, of Baltimore, Mr. Henry, Mr. Hueman, and five of these gentlemen were invited to take places upon the code authority. Mr. Henry accepted and Mr. Hueman accepted. The others declined.

Two other industry memberships of the code authority which it is provided that these 15 shall designate, are still vacant, although they have been tendered to the minority.

I think the situation arises out of the fact that the deputy administrator at that time found an inability to bring about cooperation on the part of this minority.

The other five members are representatives, as you know, Senator, of labor.

The present membership of the code authority contains three of the so-called "open-shop" group, including Mr. Elmer L. Ward,

whom Colonel Curlee mentioned, you remember. He mentioned Mr. Ward, of New York City. As a matter of fact, Mr. Ward's company operates in Sanford, Maine, Lorain, Ohio, and Knoxville, Tenn., and incidentally, although I think it is perhaps of no importance, Mr. Ward is not, I am informed, a resident of New York City. I mention that merely to clear up detail to remove the idea that those outside of the metropolitan areas are not represented.

May I add that Mr. Victor Reisenfeld, a member of the code authority, while operating in Baltimore and other metropolitan centers, also operates a plant of substantial size in North Carolina.

I think it may be said that the industry is well represented on this code authority except only to the extent that a minority declined to accept representation upon it.

Senator KING. The minority submitted a code which was considered by Mr. Rogers at the same time that the other code was submitted?

Mr. VINCENT. Yes, they did.

Senator KING. And then after the code submitted by the majority was accepted by Mr. Rogers, the minority continued negotiations with the so-called "majority", the Amalgamated group, to see if they could not harmonize any differences that existed?

Mr. VINCENT. Yes; I think you will be interested in the reason why they could not harmonize.

There were two issues upon which they split. One was the question of the so-called "2 (b)" provision of the code. The other was because of the insistence of the Industrial Recovery Association of writing in a qualification of section 7 (a) of the National Industrial Recovery Act by providing that employers and employees might contract collectively or individually as they might determine. The majority group would not accept that limitation. Neither would they accept the suggestions of the minority group respecting 2 (b), and I think perhaps I ought to give you such information as I have concerning that much-criticized provision.

The 2 (b) provision, as you will recall simply provides that the differentials between the higher-paid classes shall be maintained. In effect, that when the wages of the lowest-paid class are increased, the wages of the higher-paid classes shall be advanced to maintain the existing differentials.

There is nothing mysterious or complicated about it and——

Senator KING (interrupting). Are you speaking of 2 (d) or 2 (b).

Mr. VINCENT. There was one question remained to be determined after it was adopted, and that is, how large should the so-called "lowest paid" group be? Obviously it would be unfair to the employer to say, "We will pick the lowest-paid worker and treat him as the lowest-paid class." And in a conference between the workers and the representatives of the industry, it was agreed that 20 percent was approximately in the average plant the number of workers who could be characterized as the lowest-paid group. And that was adopted as the basis for making subsequent computations to determine whether or not there was compliance with 2 (b).

Senator LA FOLLETTE. What was the purpose of 2 (b)?

Mr. VINCENT. The purpose of 2 (b) was to prevent the minimum from becoming the maximum, and to maintain, Senator, the differentials then existing in the higher-paid groups.

Senator BLACK. Did such a clause appear in any of the other codes, or only in that particular code?

Mr. VINCENT. Senator Black, not in any other codes does it appear in the particular form or language that it does here, but many of the codes contain so-called "equitable adjustment provisions", having the same objective, that is, when the lower-paid groups are advanced, to readjust the rate of the piece-rate worker.

Senator BLACK. I was interested to know what efforts had been made to prevent the minimum wage from becoming the maximum wage. In how many codes?

Mr. VINCENT. I cannot answer that, any further than to say that in the codes under my charge—and I think I have 35 or 36 codes in my charge—that that equitable provision occurs in most if not in all of them.

Senator KING. How did you interpret this language? I am asking for my information—

> The existing amounts by which wages in the higher paid classes paid to classes of employees receiving $30 a week exceed wages in the lowest paid substantial classes shall be maintained.

Does not that allow a vast amount of uncertainty, and does it not involve a vast amount of uncertainty?

Mr. VINCENT. I think not. I think the industry undertsands it.

Senator KING. Pardon me. And does it not permit various limitations and afford a wide latitude on the part of those who are trying to enforce it, under which there can be differences of opinion and would give favoritism or discrimination willingly or unwillingly?

Mr. VINCENT. Senator, curiously enough, there was a complete agreement upon the interpretation issued by the code authority with Dr. Lindsay Roger's approval, and in view of what Colonel Curlee testified—I think his statement was that his organization knew nothing of the interpretation issued by the code authority until January 8, 1934, and I desire to give you for this record, if you desire it, a letter dated September 20, 1933, written by the Industrial Recovery Association, Mr. W. E. Popkin, executive director, to Mr. Drechsler, then and now the general counsel for the Men's Clothing Code Authority.

On September 20 Mr. Popkin in this letter asks for an interpretation of cutters and off-pressers and lowest paid substantial classes. On September 25 Mr. Drechsler wrote telling him that the code authority was about to meet and would issue an interpretation. On September 27 Mr. Drechsler wrote to Mr. Popkin enclosing the code authority's interpretation, so it was in the hands of that association as early as September 27, 1933.

Senator LA FOLLETTE. Was it also published in some trade journal?

Mr. VINCENT. It was, Senator La Follette. On November 13 it was published in the Daily News Record, of New York, and keeping in mind that the provisions did not go into effect until November 20, so that the publication in the Daily News Record, a photostatic copy of which I have here, was prior to the effective date of the provision.

Again returning to the Drechsler and Popkin correspondence, September 28, 1933, Mr. Popkin acknowledges the receipt of the interpretation sent him by Mr. Drechsler.

Senator KING. Has that interpretation been departed from?

Mr. VINCENT. In no instance, Senator King.

Senator KING. Do these new interpretations or amendments to the code involve the former interpretation or modify the same?

Mr. VINCENT. Not the interpretation. The proposed amendments to the code, of article II, which contains the wage provisions now pending, involve article II (b) if they are approved. Action has not been taken upon them yet.

Senator COSTIGAN. Was Mr. Popkin's interpretation of 2 (b) at any time similar to that of the code authority?

Mr. VINCENT. Yes, Senator Costigan. On November 15, 1933, Mr. Popkin, for his association, addressed a circular letter to each member of his organization in which he explains the meaning of 2 (b). That explanation is in accord with the interpretation made by the code authority itself, and I would be very happy to hand a copy of that letter to the committee for its information.

The CHAIRMAN. Put it in the record.

(The letter above referred to is as follows:)

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS,
New York, N. Y., November 15, 1933.

DEAR MEMBER: It is likely that section II (b) and (c) presented and still does, some problems in its application particularly to pieceworkers.

On September 28, we sent you all of the interpretations received to that date (and, incidentally, to date) from the Men's Clothing Code Authority and in paragraph 4 of the said list of interpretations it was stated that "substantial classes are to include 20 percent of the total number of employees employed in any establishment." While the hand-sewing sections are generally the lowest-paid classes, they are not representative of the lowest "substantial classes", the latter being more correctly the operating section. If, from this latter section, a number of workers are selected beginning with the lowest paid, up to and including a number equivalent to 20 percent of the total number of employees working in the entire establishment, and their actual working time earnings prior to July 14, averaged, it will result in a base wage for the substantial classes. The difference between this amount and the minimum prescribed in the code will equal the differential to apply on the higher-paid classes above the minimum, up to $30 per week.

Where piecework rates have been increased to maintain earnings under the code hours in an amount not less than that earned under the longer hours, such earnings should be checked carefully to note whether they exceed the hourly adjustment. Whatever the excess in earnings may be (over and above the hourly adjustment) should be regarded in applying the differential derived from the substantial classes. If the rise in pieceworker's earnings is above the hourly adjustment and equals the differential in amount, then there is no occasion, (in addition to the hourly adjustment) for applying the differential to the pieceworker's earnings above the minimum.

If the increase in pieceworker's earnings (above the hourly adjustment) does not equal the differential, then whatever this rise, it should be considered, as stated above, and the net difference between the said amount and the differential applied to the piecework rates in an amount equivalent to the percentage the said net differential bears to the average earnings of the pieceworkers who earn above the minimum.

INDUSTRIAL RECOVERY ASSOCIATION
OF CLOTHING MANUFACTURERS.

Senator KING. While we are examining that, I call attention to what is called the "Green Book" here, and this language:

This interpretation shall become effective with the first pay roll following November 20, 1933, and shall not be retroactive.

Mr. VINCENT. Yes.

Senator KING. Was that interpretation followed?

Mr. VINCENT. That was followed. The provision was not made operative until November 20, 1933, and in no instance was it made retroactive.

Senator KING. Does it mean that the legislation or the interpretation of the code authority making entirely new rules binding upon the industry are retroactive unless such a reservation is carefully proscribed or contained in the amendment or interpretation?

Mr. VINCENT. That is a legal question, Senator, which I should prefer would be asked of the legal division of the National Recovery Administration.

Senator KING. Without going into the legality of it, how was it interpreted and applied by you or your predecessor? Did you make it retroactive?

Mr. VINCENT. Do you mean 2 (b)?

Senator KING. The interpretation. I confess I am rather hazy about it.

Mr. VINCENT The interpretation, Senator, in the first instance, was made prior to the effective date of the provision. It was not necessary to make it retroactive. There was a subsequent so-called "interpretation" which, however, was merely for the purpose of giving an illustrative example of how the computation was made under 2 (b), and that, I believe, was made retroactive, if I remember.

Senator KING. How did you interpret the words "substantial classes"?

Mr. VINCENT. That was interpreted by an agreement between the industry members and the representatives of labor. They agreed upon 20 percent, but there is also a provision for the 2 (d) committee, and any industry member who felt that the figures of 20 percent were not equitable as applied to his particular plant, was at liberty to take the matter before the 2 (d) committee and to submit his facts showing why in his particular instance the application of 20 percent would be inequitable.

Senator KING. Did you follow and did your predecessor follow the so-called "Herwitz formula" in determining the question of the wages, and so forth?

Mr. VINCENT. Senator, there is no Herwitz formula except in the fertile mind of my good friend, Colonel Curlee. The only formula used is the formula found in the interpretation made by the code authority. The only other formula that I know of is Colonel Curlee's formula in the Green Book which you have before you. He has an algebraic effort at demonstrating the application of 2 (b). I confess that my experience is like Jiggs—I went through algebra in the nighttime, and I am not able to say whether Colonel Curlee's illustration is accurate or not.

Senator KING. Proceed.

Mr. VINCENT. While we are on the subject of 2 (b), I think it is well to take up two or three cases that Colonel Curlee mentioned, and for the information of the committee I shall take up the Curlee plant first.

It is quite true, as Colonel Curlee stated, that the code authority billed the Curlee Clothing Co., St. Louis plant, for approximately $10,000 deficiency of wages.

Senator LA FOLLETTE. Did that evaporate, as Colonel Curlee said?

Mr. VINCENT. It did not, Senator. It became a very substantial substance to the workers of that plant.

The code authority also billed the Curlee Co., Mayfield, Ky., plant for $17,000.

The code authority computed and determined that it would require an advance of 18 percent in the piecework rates above the minimum to put the Curlees into compliance. The Curlee plant, as a matter of fact, made an advance of 20 percent, 2 percent in excess of what the code authority found would be necessary to put it in compliance. Then Colonel Curlee, acting for his company, appeared in person before the 2 (d) committee of the code authority and presented a case, the "equities" of it, as the code termed it, and the "equity committee", as he also termed it, for the purpose of showing that the 20-percent advance which they had made and which brought them in compliance was such compliance with the code as justified the dismissal of the bills, and the 2 (d) committee agreed with him and dismissed the bills and accepted that company's 20 percent advance as compliance.

Senator KING. Was that retroactive?

Mr. VINCENT. It was not, Senator.

Senator KING. Dealing in future?

Mr. VINCENT. I say it was not. May I recall that? I am not able to say definitely whether that was made retroactive or not. I do not believe it was.

Senator KING. I notice here, if you will pardon me, on page 34 of the Green Book, the first bill presented was for $10,731.90, and the second bill for $19,019.54, and the present amount, nothing, and the payments made were nothing.

Mr. VINCENT. I think the inaccuracy of that is that the payment made was an advance of 20 percent in the wages. And you understand that was after the billing was made by the code authority and after the previously made 20-percent advance in order to protect the workers against a reduction of hours, to the present standard of hours of 36, so that the 20 percent was in addition to the previous advance made.

Senator KING. May I ask you right there—this is not quite germane—do you apply the same number of hours in every part of the testile districts of the United States? For instance, New York and Alabama, Utah or California? The same number of hours?

Mr. VINCENT. Not using the word "textile", 36 hours applies throughout the men's clothing industry, yes; excepting, Senator, for a limited period there were exemptions granted. One of those exemptions was to the Goodall Co.'s Knoxville, Tenn., plant.

Senator KING. And to another of the Goodall plants, was it not?

Mr. VINCENT. No; Colonel Curlee's statement that by some understanding the Lorain, Ohio, and the other plants also had a 40-hour week, was quite mistaken.

The fact is that the code authority warned the Goodall Co. that it had no such exemption for those plants, and then filed a charge of code violation against them for operating those plants 40 hours, certified it to the Compliance Division where it has been very recently heard and is now pending upon reference to me for review as to whether or not I have any recommendations to make in the matter.

So that there was no understanding by which they operated 40 hours, and they were in violation of the code.

Senator KING. Except as to one plant.

Mr. VINCENT. The Knoxville plant; they had an exemption for that. Incidentally, the code authority by the way opposed or rather

disapproved the grant of that exemption. The administration in addition to that exemption also granted four limited exemptions, limited in time, to New Orleans clothing houses. These five exemptions were all granted upon the representation of the New Orleans houses and the Goodall Co. that they were making summer clothing in direct competition with summer wash suits made in the cotton garment industry under the 40-hour week. That was the representation upon which the exemptions were granted. Subsequently, the 36-hour week, by Executive order of the President, became effective in the cotton garment code, and thereafter, comparatively recently, upon the recommendation of the deputy administrator and the approval of the division administrator, an order was entered terminating those exemptions and those exemptions are not now in effect.

Senator KING. When you speak of the code authority, what particular branches or persons would be involved, to have those words applied. It would not mean the President of the United States, would it, except in a rare instance?

Mr. VINCENT. No; the code authority is now constituted of 15 industry members, 5 labor members, and 1 administration member. There are, as I explained, two vacancies.

Senator KING. You call that the code authority?

Mr. VINCENT. That is the code authority for the industry.

Senator KING. Of what industry?

Mr. VINCENT. For the purpose of administering the code, subject, of course, to the supervision of the National Recovery Administration.

Senator KING. You mean all industry?

Mr. VINCENT. No. Each has its own code authority. The Men's Clothing Code Authority, to which I refer, has jurisdiction only under that code.

Senator KING. I understand, but is there a code authority higher than those divisional codes?

Mr. VINCENT. No. This is not a division, but a national code authority for the industry, and the authority over it is the National Recovery Administration. For instance, as deputy administrator, one of my responsibility is to supervise the administration of the Men's Clothing Code by its code authority and see that it complies with the rules and regulations, and so forth.

Senator KING. If your decision is questioned by any person in the industry, with whom would the appeal be made, if any one?

Mr. VINCENT. To the Industrial Appeals Board.

Senator KING. And from the Industrial Appeals Board?

Mr. VINCENT. By the way, Senator, I do not make final decisions. I make recommendations which are approved or disapproved by the division administrator. If he approves my recommendations for an order, whether it is an order of approval or denial, it then goes to Mr. Harriman, who is the chief administrative officer of the board, and he issues the order.

Senator KING. And from him, where does it go?

Mr. VINCENT. The order is in effect.

Senator KING. But supposing that the order is questioned, the validity of it, or the justice of it?

Mr. VINCENT. He has his judicial remedy, of course.

Senator KING. Then a man would have to go to court, is that what you mean?

Mr. VINCENT. It has just been suggested that there is an appeal to the Industrial Appeals Board as the final step in exhausting the administrative remedy.

Senator KING. That is what I was trying to find out.

Mr. VINCENT. That is correct.

Senator KING. Proceed.

Senator COSTIGAN. Mr. Vincent, if the question does not interrupt your statement, Did you hear the references yesterday by Colonel Curlee to Shelbyville?

Mr. VINCENT. Yes.

Senator COSTIGAN. Are you familiar with the facts about Shelbyville?

Mr. VINCENT. I am. I have investigated it.

Senator COSTIGAN. Will you state the facts for the benefit of the committee?

Mr. VINCENT. The Shelbyville plant operated by Lee, McClain & Skezloe, was organized locally by local subscriptions, exactly as Colonel Curlee stated. The plant did not open, however, until after the approval of the code. They were found in noncompliance under circumstances very similar if not exactly as Colonel Curlee recited, and brought before the Compliance Division of the N. R. A. They made application for relief from that noncompliance charge to the extent of an exemption for 12 weeks.

Mr. Matthews, the mayor of Shelbyville, to whom Colonel Curlee referred, made the appeal for that plant, and the Shelbyville plant was given the exemption exactly as Mr. Matthews requested it, for a period of 12 weeks.

That however resulted in an experience, so he subsequently stated, which I think is quite correct, that their workers were not yet sufficiently trained so that they could any more than barely pay the rate, and without any margin of profit. For the noncompliance period past the exemption period, there was a deficiency of wages due the workers found in the sum of approximately $3,800. They represented that they were unable to pay it. Recently, a few weeks ago——

Senator KING (interposing). Were the workers demanding payment or were they satisfied to continue work because of the immaturity of the industry and the fact that they had no work?

Mr. VINCENT. Senator, we have nothing but the representation that Colonel Curlee made on that, and that has not come personally to my attention. I cannot answer it.

Senator KING. I did not know but what the mayor may have made some representation on that when he came here?

Mr. VINCENT. He stated he did, and I do not question that that may be true. But I must say, of course, that before I would accept a statement that the workers did not want their wages, I would want a very conclusive showing to that effect.

The $3,800 deficiency, they said they could not pay. Recently I recommended that they be permitted to pay it in installments. I think I recommended either $25 a week or $100 a month so that it would not be a burden to them.

Subsequently, Senator Costigan, at the hearing of February 1, 2, and 4, to which Colonel Curlee referred, which was a hearing on the amendments proposed by the code authority and by the Industrial Recovery Association, Mr. Matthews appeared again for the Shelby-

ville plant and stated that their experience up to that time indicated that they needed further consideration, and that if the proposed increases in the basic wage rates were adopted, they should have an exemption from them. Upon the statement that he made, the figures that he presented, which I have no reason to question, I would say that if the amendments or any amendment is adopted increasing the basic minima, that the Shelbyville plant should probably have a stay from such increases, at least for a limited period of time.

Senator BLACK. Why?

Mr. VINCENT. Because their showing is that their workers are new. You may say they are learners or apprentices who have not yet quite the skill to do the amount of work that the skilled workers will put out.

Senator BLACK. Is it customary to give exemptions to new plants which permit them to pay smaller wages or work longer hours than old plants?

Mr. VINCENT. Only to this extent. Many of the codes have learner provisions in them for limited periods of time, usually up to 10 percent.

Personally I do not think there is any economic reason to make the public pay for the training of the skilled workers. Where, however, you find such a situation as this, the investment had actually been made, the object was to take the people off the relief rolls, and the plant was opened, and we felt, and I think the Compliance Division felt and I know I did, that some consideration should be given to the rather exceptional situation in that instance.

Senator BLACK. What I was interested in is this. I should judge that if you recommend that in one instance, it probably has a precedent. Has it been customary or is there any rule?

Mr. VINCENT. No.

Senator BLACK. Has that been done in many instances?

Mr. VINCENT. As a rule, we have the limitation in the code and adhere to it. In some special instances—Senator Harrison may remember one in his State—we have granted exemptions, but they were due to exceptional circumstances surrounding the particular operation, and were, I say there, granted very cautiously and very rarely.

Senator BLACK. You do have the power then, under the law as it is now written, if you see fit to make exceptions for as many particular units of business as you determine to be wise, and permit them to work longer hours and pay smaller minimum wages than other plants; you do so?

Mr. VINCENT. The National Industrial Recovery Act as written authorized the President to do that, and by Executive order he has delegated it to the board, that is true. May I say that none of these exemptions when granted are granted until they are submitted to the Industrial Advisory Board, the Labor Advisory Board, the Research and Planning Division, the Consumers' Advisory Board, and the legal division, so that they are subjected to a very careful scrutiny, particularly respecting the facts upon which the application is based. Competitors have a chance to appear likewise.

The CHAIRMAN. I may say I am very much in sympathy with the idea that where a new industry is established in a locality where there are not the trained employees, that there ought to be flexibility in that situation, because it gives encouragement to industries being located

to assist in taking care of the unemployed and the unemployment situation.

I know that in my own State that where certain industries have been established and where there were no trained employees, that it would have been very costly and perhaps a prohibition against establishing the industry if everybody had immediately gone on the higher wage scale and that during that period when they were being taught and being trained and becoming efficient, that there ought to be exceptions. That is my idea.

Mr. VINCENT. It presents to us a very difficult situation in this, Senator. Most industries, when this law went into effect, if not overexpanded, at least were not able to utilize their existing productive facilities. Moreover we had this problem: obviously the higher-paid wages and the greater earnings of the skilled workers are a much better market for farm products than lower-paid wage groups.

A worker receiving $25 a week can, for instance, buy a wider variety of food and more adequate quantities than a worker who only received $14 or $15 a week. So that you have a question of national economy involved when we come to consider whether or not we are going to make exemptions generally. Up to the present time I think I am justified in saying that the exemptions made by the National Recovery Administration have been limited to those instances where the exceptional circumstances involved seemed to justify it, where the investment had been made and where the surrounding circumstances justified it.

Senator KING. May I ask you a question there?

Mr. VINCENT. Certainly.

Senator KING. Do you assume to determine what is for the economic advantage of all parts of the United States, and to that extent to prevent A and B and C in Alabama or Colorado or California starting a plant that would furnish work to a lot of people who were on relief, or seeking the development of a new enterprise, and freeze the economic situation of an industry or freeze the industrial conditions of the country in the position and situation in which they were?

Mr. VINCENT. Not at all, Senator. When these applications come up, they are subject to a public hearing where all of the facts may be shown. I cannot assume to speak for the board as to the considerations that govern it in each case. I do know that these orders are all submitted to each division. As I said before, to the research and planning, the Consumers' Advisory Board, to the industrial and labor advisory boards and to the legal division, before they are acted upon, for their advice.

Senator KING. See if I understand you. Then if A and B and C desire to open a new silver mine or a lead mine or a coal mine in Alabama or California, or A, B, and C desire to start a little woolen mill or a factory out in Colorado to consume the wool which is produced there, you would have the right to deny them that opportunity?

Mr. VINCENT. No; not at all. The act gives us no such right and I do not know an instance of such a denial.

Senator KING. I understood you to say that they would have to pass through all of these organizations?

Mr. VINCENT. No; it would be a question of whether you would grant them an exemption from the code wage rates. That would

be all. There is no authority in the act for a limitation upon the expansion of business in any industry.

Senator KING. I rather got the impression from your statement that it would be a national problem whether it would not be better to pay $25 in one section of the country where the industry was already established, because the purchasing power of the man getting the $25 was greater than the purchasing power of the one getting $14 in another section where a new industry would be established.

Mr. VINCENT. No. Where you have an application by a new industry unit or a member who has been in the business before, for an exemption to any extent from the code wage rate, you do have a question, a national problem if you please, involved as to whether or not you are going to give him any such special privilege at the expense of the other members of the industry, and indirectly at the expense of the general public which is interested, of course, in stabilizing its markets by keeping established wage rates at least at their present level without breaking them down.

Senator KING. Then as I understand, it is the average for which you are contending, applying merely to the question of granting exemptions and not to the inhibition of the establishing of new industries which might give great advantages to local communities or State or sections of our country?

Mr. VINCENT. You are quite right. Only to the exemption of such a new industry member.

Senator BLACK. Mr. Vincent, I have a telegram now which I sent down a few days ago to the Recovery Administration. I do not know the detailed facts but he claims that he has to be granted the privilege of getting an ice plant in Montgomery, Ala., and he cannot do that unless he gets the permission of the code authority.

Mr. VINCENT. I cannot answer, Senator Black. I have no relationship to that code or industry, and I have not heard of the instance. I suggest that some member of the board or official familiar with it answer that question.

Senator BLACK. I sent the telegram to Mr. Richberg. I had understood from the testimony given here before that they had stopped declining to permit new industries to be set up, and this gentleman made the direct and positive statement that he had been informed by the secretary of the Ice Code Authority that he cannot put up an ice plant unless he first gets the permission of the N. R. A.

Mr. VINCENT. I am unable to answer your question.

Senator BLACK. I want to ask a question in connection with the opinion of the chairman.

Senator KING. Before you leave that, may I ask a question?

Senator BLACK. Yes.

Senator KING. Did you not notice the other day that a man had been prosecuted by the N. R. A. in New Jersey because he put up a little ice plant on his own farm to aid in curing some of the meats and canned goods that he produced?

Mr. VINCENT. No, Senator; I did not see it.

Senator KING. And do you not remember the fact that this man in Florida was prosecuted for the establishing of an ice plant?

Mr. VINCENT. I do not.

Senator BLACK. Mr. Vincent, the question came up a few moments ago and I asked you a question or two without indicating any opinion

at all. The chairman stated that he wanted to give his opinion. Since that has come up, I want to ask you a question or two. As I understand it, there is no uniform rule either in the law or in the codes by which any man who wanted to engage in the operation of a new factory could know in advance what he must observe with reference to exemptions or wages and what has to be obtained by a special permit, on the face of which he presents it to the fallible or infallible human beings from various sections who would then have the power to determine as to that particular unit, without that being an established rule which people in that business in other sections might or might not observe and follow.

Mr. VINCENT. That is true, Senator.

Senator BLACK. Then it comes down to this, does it not? Whether we believe that we should have those exemptions which you mention, which may or may not be right; we may have differing ideas as to how far we should go in reference to determining that, but it gets down to this question: Why could not the code authority, since we have delegated to it the power of making these laws and regulations, why can it not if it wants to provide exemptions, why could it not adopt uniform rules that every man would know where he stood if he wanted to put up a new business?

Mr. VINCENT. Senator, the code authorities are not now delegated any such power. They are governed by the provisions of the code, which are approved by the Administration, and I would question the advisability of granting code authorities such wide discretion.

Senator BLACK. I understood though that you said that they do have the discretion and can take any mill and any factory anywhere in the United States that they see fit and give them an exemption as to the minimum wages and the maximum hours as to that particular factory.

Mr. VINCENT. No, Senator. If you got that impression, I did not express myself clearly.

Senator BLACK. I asked you that and I evidently did not make myself clear.

Mr. VINCENT. The applications are made by the industry member who wants an exemption, to the code authority. All that the code authority can do is to make a recommendation to the National Recovery Administration.

Senator BLACK. Let us forget that there is a code authority and an Administrator, and let us consider the whole picture of everybody, the code authority, you, and the Administrator, and the President.

Mr. VINCENT. Yes.

Senator BLACK. It is true, is it not, or did I misunderstand you, that what you have the right to do and what you do is to take the particular factory or business and pass on whether you will grant to that particular factory or business an exemption as to minimum wages and maximum hours?

Mr. VINCENT. That is true.

Senator BLACK. All right. Then there is no general rule which has been adopted which is clear in its import and which all business men can understand and which would give the business man who wanted to institute a business in my State of Alabama or the Senator's State of Mississippi, the right to know that even though every member of that authority was from Vermont and New York or California, that

if they observe that rule that they would get exactly the same permit and exemption as those from any other State? There is no such general rule, is there?

Mr. VINCENT. No, there is not, and I think there should not be. In other words, I do not think the standards set up either for hours or minimum wages should be broken down by a general rule, and if there are to be exceptional instances in which an exemption is granted, I think they ought to be treated as exceptional and never made the subject of a general rule.

Senator BLACK. I evidently did not make myself clear, because you are very anxious to state that you did not think there should be a general rule on hours. We will admit that you do not think so.

Mr. VINCENT. No, we do have a general rule on hours. We have uniform hours, maximum hours, which I think should be established, and that there should be no general rule of exemption from it.

Senator COSTIGAN. Mr. Vincent, Senator Black is really asking whether there should be a general rule for exceptions.

Senator BLACK. What I want is this. Yes, if you are going to have exceptions, why should not each man know what exception he is going to get? Here is what I am after: I understood you to say that you had exempted certain factories or mills or plants on the basis that they were new. Without going into the wisdom of that question at all, I want to ask you a question or two about it. That being true, what I was after was this: When an application is made for that exemption with reference to those maximum hours or minimum wages, you have a right, or your authority, the whole thing, has a right to determine in each particular instance whether or not it should be granted, and there is no general rule governing the right of those who seek that exemption?

Mr. VINCENT. There is no general rule, because it is an exception. In other words, if there is a hardship in a particular instance, I agree that there should be some exception to the general rule to relieve it.

Senator BLACK. Well, you would have a right if you wanted it, to determine under that general exemption that this plant that opened up in Mississippi, that it was not a good place for it, and that it ought to stay up in Illinois?

Mr. VINCENT. No.

Senator BLACK. You have no rules governing you, have you?

Mr. VINCENT. The questions come up in this manner—

Senator BLACK (interrupting). Would you or would you not have that right?

Mr. VINCENT. We get no applications for exemptions except on established plants.

Senator BLACK. May I have the question repeated to Mr. Vincent by the stenographer?

(The question was repeated,)

Mr. VINCENT. That is a legal question, but my own opinion is that we have no such power.

Senator BLACK. Let us get it right clear. Are you bound by any rule or regulation of law as to the motives prompting you to reach the conclusion that the exemption should be granted in one instance and not granted in the other?

Mr. VINCENT. The act itself says, Senator, "hardship", and we take the facts as presented.

Senator BLACK. Are there any general regulations or rules which the man who wanted to establish that factory could point to or to get that exemption could say, "You should grant this exemption", or "You should not", or do you have the right to act on whatever motive you see fit as to that exemption?

Mr. VINCENT. No. We act upon the facts.

Senator BLACK. You act upon the facts?

Mr. VINCENT. Yes.

Senator BLACK. Are you limited by anything at all, and if so, what?

Mr. VINCENT. By the facts.

Senator BLACK. By the facts; all right. Then if it were a fact that one of them was in Illinois and another one in Colorado, that would be a fact?

Mr. VINCENT. Those are not the kind of facts we pass upon.

Senator BLACK. Those are not the ones that would influence you as an individual, but if you wanted it to influence you, it could, could it not?

Mr. VINCENT. I do not think that a discreet administrator should be governed——

Senator BLACK (interrupting). I am not talking about a discreet administrator. Would you or would you not if you wanted to, have the right to take that into consideration, or is there any rule which would say you should not?

Mr. VINCENT. I would say that there is no general rule on that subject, Senator.

Senator BLACK. Then is it or is it not any rule which would prevent your taking that subject into consideration?

Mr. VINCENT. I think if we were governed by that consideration, we would clearly, under the act, be acting without authority. That, again, is a legal question which perhaps I should not assume to answer.

Senator BLACK. Then you think that you are restricted in some way as to which ones you will grant the exemptions and which ones you will not?

Mr. VINCENT. Very much.

Senator BLACK. What other restrictions are there?

Mr. VINCENT. The facts in each particular case determine whether or not there is hardship.

Senator BLACK. Who determines what facts shall be used in the evidence?

Mr. VINCENT. The deputy administrator hears the application, he submits the order, he recommends to the various boards and divisions, and then it goes forward to the division administrator for his approval or disapproval.

Senator BLACK. And he can consider any facts that are there, can he not?

Mr. VINCENT. Any facts in the record, of course.

Senator BLACK. Why, certainly. And you think that they should continue to have the absolute right to grant these exemptions as to minimum wages and maximum hours to any unit they saw fit, on such evidence as they desired?

Mr. VINCENT. Only in cases where hardship is provable.

Senator BLACK. Certainly. But when the question comes up as to hardship, that leaves it to those individuals to determine it, does it not, Mr. Vincent?

Mr. VINCENT. I think all cases have to be determined by individuals, whether it is a law case or an administrative case.

Senator BLACK. Do you think in that case that this board of five which has just been created, for instance, should be constituted of people who represent each section of this country, or nine, or whatever it is?

Mr. VINCENT. I think it would be quite impossible to have a practical operating administrative board if it was so numerous in its membership that it represented all parts of the country. I think our boards, such as the Interstate Commerce Commission and the Federal Trade Commission, and our courts, for example, and the Executive, for example, indicate the practicability of having individuals or small commissions constituted so that they can practically administer public business. A large body would have much greater difficulty in passing upon the innumerable administrative questions that arise.

Senator COUZENS. May I ask you if you have had any experience with these home workers in your particular code authority?

Mr. VINCENT. Yes.

Senator COUZENS. Has that been good or bad?

Mr. VINCENT. Senator, we have provisions prohibiting home work in a number of industries, that have worked very successfully. The men's clothing industry here is notably one of them. There is no home work left in the men's clothing industry. That is true of some others. In other instances, however, we are having difficulty in getting observance of the provisions.

Senator COUZENS. When the code was started for your industry, was the extent of home work large or small?

Mr. VINCENT. In the men's clothing industry?

Senator COUZENS. Yes.

Mr. VINCENT. It was a very substantial group. The labor and industry commissioner for the State of Pennsylvania, for instance, in which there is a large section of this industry, reported in 1932 that the home-work group in the men's clothing industry was the largest single home-work group in that State. That has, however, been successfully eliminated by the prohibition in this code. Those workers are inside, and I may say, getting vastly more in wages than they have ever received before.

Senator COUZENS. Have you any statistics as to the number of home workers in this industry at the time the code was started? Do you know how many there were?

Mr. VINCENT. I can only speak from memory. I have been told it was about 20 percent.

Senator COUZENS. Do I understand that that 20 percent has been entirely eliminated?

Mr. VINCENT. Yes.

Senator COUZENS. And that these home workers are now working in the industry, do you know?

Mr. VINCENT. That is true.

Senator COUZENS. Is there any exception made for the aged or cripples?

Mr. VINCENT. Yes; there is a handicap provision. The Executive order of the President provides for that, for mental and physical handicaps.

Senator COUZENS. Where there is no contagious disease involved?

Mr. VINCENT. Yes.

Senator COUZENS. So you believe that the N. R. A. has made great progress in connection with the limitations upon the home workers for these industries?

Mr. VINCENT. Unquestionably. May I say also that home work was not limited to any particular areas. Naturally, the greatest amount of home work was found in those market centers where the larger part of the industry was centered, but we found home work in practically every part of the industry until the code went into effect.

Senator KING. What proportion of the garment industry is centered in New York City?

Mr. VINCENT. That would be difficult for me to state.

Senator KING. Just a guess.

Mr. VINCENT. For instance, in the coat and suit and dress industry, I would say 80 to 85 percent. Vastly less in the men's clothing industry.

In the blouse and skirts, I would say that it is perhaps 75 percent in the metropolitan area or perhaps 80 percent in New York, Philadelphia, and Baltimore.

Senator KING. When you say that a certain percent is centered in a certain State or city, would that include the cutting which is done, for instance, in New York, and sent to Maryland, or to Connecticut, or to some other State to be worked up into the garments? Where would you attribute that particular garment to, to Connecticut where it is worked up, or to New York where it was cut?

Mr. VINCENT. I think that you would have to attribute it to the area in which it is cut and finished. As a matter of fact, the cut garments that are sent out to contract shops are not sent great distances. Sometimes from New York into Connecticut or Pennsylvania or New Jersey, but that is a small percentage.

Senator KING. I got the idea the other day from the testimony of Mr. Hillman, that because of the cheap cost of transportation, owing to trucks, and so on, that garments are sent after they were cut, to some distance away to be sewn and if not completed, at any rate, to go through various completing processes.

Mr. VINCENT. That occurs; but you understand, most of the contract shops are in those centers where the cutting is done, although some cutting is sent out to shops outside.

Senator KING. Is not a great deal of the cutting sent out from New York over into New Jersey and into Connecticut?

Mr. VINCENT. Considerable.

Senator KING. When you said 80 or 85 percent of certain garments were in the metropolitan district of New York, as I understood you, I was just wondering whether you included the finishing of the garment there?

Mr. VINCENT. Yes; I did.

Senator KING. What percent of the garment industry is concentrated in New York, Rochester, Philadelphia, and Chicago?

Mr. VINCENT. You mean of the men's clothing?

Senator KING. Yes; men's clothing.

Mr. VINCENT. I would not be able to answer that. As a matter of fact, probably 85 percent of it is confined to the 10 principal markets, which include New York, Rochester, Chicago, Cleveland, Cincinnati, St. Louis, Boston, Baltimore, Philadelphia, and so on.

Senator KING. Would 80 percent be in the four cities that I have mentioned?

Mr. VINCENT. I think not by any means; no.

Senator KING. You do not think so?

Mr. VINCENT. No. As an example, if you take the 50 largest men's clothing establishments, Senator, you will find them in all of the cities I have named and in many others. For instance, 9 of the first 50 are in small communities. Nine of the very large ones are in small communities.

Senator KING. As, for instance, where?

Mr. VINCENT. The Greif Co., for instance, plants are in small communities in Pennsylvania, Maryland, and Virginia.

Senator KING. Perhaps I ought not to ask for your personal opinion. Do you think that it is to the advantage nationally to freeze in one or two or four or five big cities, this industry, or any other important industry, and to adopt policies, governmental or otherwise, that would tend to prevent decentralization, and the diffusion of our industrial activities to other countries?

Mr. VINCENT. Certainly not; but I think expansion ought to be under normal processes, and that established business concerns ought to be protected in such comparative costs, for instance, as will safeguard them.

Senator CONNALLY. In other words, safeguarded so that they would not have effective competition by new industries?

Mr. VINCENT. No; I mean safeguard them in competitive costs, Senator. For instance, it obviously does not matter where an industry unit is located, whether it is in St. Louis, Baltimore, Cleveland, or New York—it is a part of the industrial set-up, and obviously is entitled to something like uniform standards in working hours and in wages.

Senator CONNALLY. Is it? If that were true, then an inefficient industry would never have any fresh competition by a new location or anything that would be an advantage, and the other fellow would have to come up to that standard or not get the business.

Mr. VINCENT. I know of no existing processes that operate to freeze industries into the rigid set-up that we now have.

Senator CONNALLY. Except N. R. A.?

Mr. VINCENT. Senator, that is rather a broad question, or is it a statement that you want me to answer?

Senator CONNALLY. I want to make it broad. Excuse me for interrupting you, Senator.

Senator KING. Pardon me, but I would like to ask you this question and then you can answer the Senator. Suppose in Alabama, and this is the fact, that they have advantages there given by nature; they have coal, some of the best coal in the world, and some of the best iron ore in the world, and the people of Alabama, desiring to develop that industry and to give employment to the people of the South and their own citizens go into the business extensively and

make steel in all forms in competition with the Steel Trust, with its activities in Cleveland and in Youngstown——

Senator BLACK (interrupting). And Pittsburgh.

Senator KING (continuing). Do you think that any policy by the N. R. A. or by the Government should interpose obstacles to the execution of that laudable purpose on the part of the people of Alabama?

Mr. VINCENT. Certainly not; and, as I understand the law, it imposes no such obstacle.

Senator KING. Well, there may be a difference of opinion.

Senator BLACK. Have you read the Federal Trade Commission's report on it?

Senator KING. Which we put into the record?

Mr. VINCENT. I have not.

Senator CONNALLY. Mr. Chairman, may I ask the witness a question if the Senator is finished? You testified about the men's garments industry.

Mr. VINCENT. More specifically; yes.

Senator CONNALLY. Is it not true that the N. R. A. in its early stages undertook to put the manufacturers of common work clothes, cotton clothes, and jumpers, and rough things of that kind, under the same code that they did the fine woolen suits?

Mr. VINCENT. A controversy arose——

Senator CONNALLY (interrupting). Did they or did they not?

Mr. VINCENT. I was not here when those code hearings were held. I have read the Men's Clothing Code record.

Senator CONNALLY. I am talking of men's working clothes.

Mr. VINCENT. Yes; there was a controversy over it.

Senator CONNALLY. The woolen people wanted to make the rough cotton people come in and pay the same wages, for cutters, and others.

Mr. VINCENT. No; I do not understand that. I understand that there was a question whether there should be wage differentials which would fit the market price, and so on.

Senator CONNALLY. What was the controversy about, then?

Mr. VINCENT. Over the jurisdiction as to which code they would come under.

Senator CONNALLY. Did they finally get a code of their own? The cotton or work clothes people?

Mr. VINCENT. No; the cotton pants with 100-percent cotton content are under the cotton garment code with many other cotton garments.

Senator CONNALLY. I say, they got a code of their own, finally.

Mr. VINCENT. They are a part of the cotton garment code, yes.

Senator KING. Has it not been the plan of the N. R. A. to start off putting every industry into a strait-jacket on a Procrustean plan?

Mr. VINCENT. Quite the contrary, excepting for hours and the minimum wage. Senator, I would say respecting those codes with which I have contact, and I would not assume to speak respecting every code, but that is not true in the apparel codes with which I am connected.

May I say this, that since the adoption of the men's cloting code to give you an indication of what the practical effect has been, the downward trend of decreasing employment and declining wages and

declining production are trends which have been put into reverse. Employment has been widely spread by the reduced hours, it has gone in a little over 18 months from 109,000 to now about 140,000 in the industry.

Senator LA FOLLETTE. You are speaking of the men's clothing industry?

Mr. VINCENT. Yes. Production has substantially increased and to such an extent during the current season that the industry through its code authority asked 4 hours overtime for a 5-week period, which was granted on March 12.

And may I add to that, that the fatalities or mortality in the industry have sharply declined. It was down in 1934 to 211 firms, and only 18 of the 211 were outside of the large metropolitan centers. So that the maximum hours, the uniform hours within the industry, and the minimum basic wage rates have taken a long stride toward stabilizing the industry, toward stabilizing competitive costs, and I think respecting this industry——

The CHAIRMAN (interrupting). Mr. Vincent, you have about 10 more minutes, and if you have some more facts there, I wish you would put them in within that time.

Mr. VINCENT. I should like to turn for a moment to some things that Colonel Curlee gave your committee respecting the information that he said he was unable to obtain from the code authority. I am not sure—did Senator Costigan give you a volume of data?

The CHAIRMAN. Yes; it is on file.

Mr. VINCENT. May I say, Senator, that the 99,000 sample pay rolls that are included in this data have been checked with 125,000 with the Bureau of the Census and with the Bureau of Labor Statistics, and the variation in the wage rates found was one-tenth of 1 percent between the two.

The CHAIRMAN. Those were the things presented by Mr. Richberg, I think?

Mr. VINCENT. Yes. Colonel Curlee said these data did not contain the man-hours, the annual earnings, and production data. If your technical adviser will turn to tables 30 and 31, he will find the rate of annual earnings, and if he will turn as he doubtless will to the tables 34 and 35, he will find the production record; and if he will turn to table 37, he will find the man-hours.

In addition to tnis data that was furnished to Colonel Curlee, I advised him that what he desired was obtainable from the Bureau of Labor Statistics so far as the wages and man-hours and annual earning rates were concerned. I wrote those bureaus asking them to supply them to him, so that his description of what was furnished was quite inadequate.

To that I desire to add this, that these data not only represents 99,000 pay rolls, but covers 1,471 establishments, 50 of them being the largest manufacturers in the industry, and 650 smaller ones, from the smallest to average concerns which employ up to 300 workers.

The CHAIRMAN. That was all the information on that relating to that subject matter then?

Mr. VINCENT. No; the date was fixed at July 1 for this reason——

Senator KING (interrupting). What year?

Mr. VINCENT. 1934. For the reason that prior to July 1, the code authority was not getting summary reports, and only beginning

July 1 did it get summary as well as detailed reports, and in order to have complied with Colonel Curlee's request for specific daily and weekly reports for every week for the entire year, it would have required an accounting force and an expense which, had it been included in the Budget, would certainly not have been approved, because it is entirely needless.

I think your advisers will inform you that this is a comprehensive and thoroughly scientific compilation and furnishes every industrial data factor that is needed for the most thorough consideration of the proposed amendments that were up.

In addition to the enumeration I gave you, this data includes 50 large contractors and 700 contractors employing about one-third of the total employees in the industry.

In connection with this, statements were made here respecting earnings. A number of the members of the committee asked respecting earnings in the Industrial Recovery Association as contrasted with the others. May I say of the 50 largest, Senator, the 10 lowest wage establishments are all in the Industrial Recovery Association, the 10 highest are all in the U. S. A. Association excepting one which does not belong to either association, and that the differences in the average wages between those two groups are these: That, in the lowest 10, the average wage is 45 cents per hour. In the highest 10, 9 of which belong to U. S. A. Association, the average wage is 79 cents.

The CHAIRMAN. I wish you would have the reporter take that so that it can all be included in the record, if you have certain data there.

Mr. VINCENT. I am reminded of something I have omitted. Prior to the adoption of this code, many wage rates for large numbers of workers were down as low as $4, $5, and $6 per week. The present average hourly rate in the industry at the time this compilation was made, that is up to the end of last year was 66.2 cents per hour.

Senator LA FOLLETTE. What were the average weekly earnings, do you know?

Mr. VINCENT. From memory I cannot say, but the rates of weekly earnings are also among this data.

Senator LA FOLLETTE. Will you furnish that for the record please?

Mr. VINCENT. Yes. By the way, I do remember the number of a table here, Senator La Follette, that will give that.

Senator KING. While you are getting that, could you state the number of workers that were in the contract shops? What proportion of the entire amount were in the contract shops?

Mr. VINCENT. The 700 included here in these tables employed about one-third, but that is not quite all, Senator.

Senator KING. I am speaking of the entire garment industry.

Mr. VINCENT. I cannot answer that from memory.

Senator La Follette, as an example, the 10 establishments, the lowest 10 of the 50 that I mentioned whose average hourly rate is 45 cents per hour, have an annual rate of $581, and a weekly rate of $11.17. The 10 highest, for instance, making 79 cents per hour, have an average weekly rate of $20.29, and the annual rate is $1,054.96.

Senator KING. Do you know what the predepression wages were?

Mr. VINCENT. The average weekly?

Senator KING. Let us say in 1927.

Mr. VINCENT. No; I do not. In 1933, precode, it was $12 and some cents average throughout the industry weekly.

Senator KING. You are getting the depression. I am trying to get before the depression.

Mr. VINCENT. It was not uniform. In some sections it was very high and in others very low.

Senator LA FOLLETTE. If you have time, Mr. Vincent, I would like to have your comments on a few more of those cases that Colonel Curlee mentioned.

Mr. VINCENT. I desire to. Where it was charged that different amounts were billed. As an example, we will take the Block case in which Colonel Curlee pointed out that the first billing was $21,000, and the second billing was $37,000, and the last one was $16,000.

Senator BARKLEY. The first what?

Mr. VINCENT. Billing of deficiency wages. The code authority made an examination of the plant, computed the deficiency wage, and made a billing.

Senator BARKLEY. Is that what you call presenting a bill?

Mr. VINCENT. Billing, they call it; presenting a bill.

The CHAIRMAN. Mr. Vincent, you have about finished, have you not?

Mr. VINCENT. No; I have not. I would like to cover for the benefit of giving your committee the information on a number of matters that were touched on here in which I think the information was so inadequate as to create quite a false impression.

The CHAIRMAN. Be here in the morning at 10 o'clock. There are two or three matters I want to bring up before we go on the floor.

Senator CONNALLY. I want to introduce a letter into the record. Some time ago here I raised a question about the possible appointment of General Wood to a high position in the N. R. A., and I want to insert in the record a letter from General Wood disavowing anything of that kind and expressing the opinion that he would not be the right man for the job. I want to commend the letter. I think it is a very fine attitude.

(The letter is as follows:)

SEARS, ROEBUCK & CO.,
EXECUTIVE OFFICES,
Chicago, March 20, 1935.

Hon. TOM CONNALLY,
United States Senate, Washington, D. C.

MY DEAR SENATOR CONNALLY: I noted in the press that you had criticized my possible appointment as Mr. Clay Williams' successor in the N. R. A.

I wish to say that no such appointment has been tendered to me, but that if it had, I could not have accepted. I do not think that I would have been the right man for the position and I believe that the small merchants, who wrote to you, would have been justified in criticizing such an appointment.

Very truly yours,

R. E. WOOD, *President.*

Senator BARKLEY. I would like to ask Mr. Vincent a question, preliminary to what he might testify to tomorrow, and which he may be able to obtain. Is there any source from which we may obtain the increase in the wages under the codes of all the clothing industries, together with the profits made by the manufacturers of clothing under the code, which will be accurate and upon which we can rely?

Mr. VINCENT. We can give you the data that is compiled——

Senator BARKLEY (interposing). The effect upon the profits and the business of the industry as a whole, and of the individual members

of the industry. Is there any reliable source from which we can obtain that information?

Mr. VINCENT. Senator Barkley, there is as to part of it. About the profits, I cannot answer, but I will bring here with me the Research and Planning report on the subject.

Senator BARKLEY. I would like for you to furnish that information as fully as possible, or if you cannot furnish it, tell us where we can get it.

The CHAIRMAN. Will you do that tomorrow, please?

Senator BLACK. I would like him to bring one other thing. You have stated that there was an increase of production?

Mr. VINCENT. Yes.

Senator BLACK. I would like to know the percentage of increased production since you have shortened hours, and the percentage of increased employees.

Mr. VINCENT. In this industry?

Senator BLACK. In this industry; the ones you are interested in.

Mr. VINCENT. I will try and get that for you.

Senator BLACK. And also any complaints that you had from any unit anywhere in the United States that by shortening the hours to 36, you had created a scarcity of labor that is destroying the right of people to buy clothes.

Mr. VINCENT. Yes, sir.

The CHAIRMAN. I would like for Dr. Thomas Blaisdell to be present tomorrow. We want to put him on right after we get through with Mr. Vincent.

I would like to have reported out, if there is no objection, a bill introduced by Senator McAdoo that permits articles imported from foreign countries for the purpose of exhibition at San Diego, to be admitted without payment of tax.

Senator KING. I move that it be reported favorably.

The CHAIRMAN. It has been recommended by the Secretary of the Treasury and passed yesterday. Without objection it will be reported.

Senator KING. I might add that that is similar to those we have had in former years for the same purpose.

(Whereupon, at 12 noon, the hearing adjourned until Thursday, Mar. 28, 1935, at 10 a. m.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

THURSDAY, MARCH 28, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison, King, Barkley, Gore, Costigan, Black, Gerry, Couzens, La Follette, Metcalf, and Hastings.

The CHAIRMAN. The committee will come to order.

I would like to announce, so that the record will show, that there is available for distribution to the members of the committee a number of memoranda and charts not previously mentioned, giving economic, legal, and administrative data relative to the administration of the act.

The titles of these memoranda and charts are as follows:

1. Retail Trade: Examples of Benefits Under Code.
2. Boots and Shoe Industry: Examples of Benefits Under Code.
3. Cotton Textile Industry: Examples of Benefits Under Code.
4. Bituminous Coal Industry: Examples of Benefits Under Code.
5. Iron and Steel Industry: Examples of Benefits Under Code.
6. Furniture Manufacturing Industry: Examples of Benefits Under Code.
7. Lumber and Timber Industry: Examples of Benefits Under Code.
8. Paper and Pulp Industry: Examples of Benefits Under Code.
9. Motion Picture Industry: Example of N. R. A. Assistance to Small Enterprises.
10. Booksellers Trade: Example of N. R. A. Assistance to Small Enterprises.
11. Examples of Benefits of N. R. A. in the Retail Grocery Trade with Special Reference to Its Effect on Small Enterprises (a letter of the El Paso Retail Grocers Association to Hon. Morris Sheppard, United States Senator).
12. Examples of Benefits Derived from N. R. A. by Small Industries (a letter of Rockford Brick & Tile Co. of Rockford, Iowa, to Hon. Fred Bierman, Member of the House of Representatives, which was included in the extension of remarks in the Congressional Record).
13. N. R. A. and Effect on Small Enterprises (an example of benefits received under the Knitted Outerwear Code).
14. N. R. A. and Small Enterprises (indicating respects in which N. R. A. is an instrument to combat monopoly and how small enterprises have benefited by N. R. A. raising sweatshop standards).

15. Wage Restitutions Resulting from Adjustment of Labor Violations.
16. January 1935, Industrial Production (Summary).
17. Business in February 1935 (Summary).
18. Chart of Business in February 1935.
19. Statement of Purposes and Supervision of Code Authorities.
20. Statement with Reference to Section 3 (e) (Tariff Section) of the N. R. A.
21. Analysis of N. I. R. A. Decisions.
22. Quotations from Cases Relevant to the Constitutionality of the N. I. R. A.
23. Graph Indicating Percentages of Commercial Failures to Total Concerns in Business (1921–34).
24. Charts on Major Industries Under the N. I. R. A. (covering employment, hours of work, production, prices, etc.).
25. Representative Character of Proponents of Codes (the first material made available to committee will be added to from time to time as data is completed).
26. Survey conducted by New England Council of the National Recovery Administration in New England (general results of survey).

Senator KING. I suppose they have been prepared by the N. R. A.?

The CHAIRMAN. Yes.

I would like to announce also that Mr. William Green, president of the American Federation of Labor, will be here at 10 o'clock in the morning.

Now, Mr. Vincent, will you proceed?

Merle D. Vincent thereupon resumed his statement.

STATEMENT OF MERLE D. VINCENT—Resumed

Mr. VINCENT. Senator Harrison, just before you recessed yesterday, Senator King and Senator Black, and I think Senator Barkley, asked some questions which I will take up first in an effort to answer.

One question was respecting the precode wage rates as compared with the weekly wage rates under the code. I have data taken from a publication of the Research and Planning Division which I shall be very glad to leave with the committee.

The CHAIRMAN. Very well. The clerk will take that.

Mr. VINCENT. The men's clothing embraces not only what we call the men's clothing industry, but men's apparel of every kind.

Senator KING. You mean you have taken it from this publication, "Price and Price Revisions"? We have all of those publications.

Mr. VINCENT. Yes; it is furnished by the Research and Planning Division.

Senator KING. Then you are just recapitulating something which is stated here?

Mr. VINCENT. Quite true.

Senator KING. You are giving figures, then, that are contained in this document, "Report on the operation of the National Industrial Recovery Act"?

Mr. VINCENT. Yes.

Senator KING. After 1929?

Mr. VINCENT. Following 1929.

Senator KING. You have no figures for 1925, 1926, 1927, and 1928?

Mr. VINCENT. I have not, and I was unable to obtain any.

Senator KING. What is the relevancy of the precode, when everything, as you know, in 1932 and 1933 was almost at the bottom of the depression, with prices down on everything, including wages?

Mr. VINCENT. Quite true, but it is the only comparison we have.

The CHAIRMAN. You are offering this in answer to questions that were put to you?

Mr. VINCENT. Yes. The June 1933 weekly rate in all the men's apparel industries was $12.73. In June 1934 it was $15.75. In December 1934, $17.13 per week.

In the women's apparel industries, June 1933, was $14.26; June 1934, $16.24; November 1934, $17.70.

I was requested to obtain statistics showing profits of the men's clothing industry in 1934 as compared with earlier dates. In the very brief time at our disposal, we were unable to get comprehensive data. The Research and Planning Division handed me the returns on 23 companies which it obtained from the National City Bank's March financial letter.

In my opinion, the number of companies is not a sufficiently wide range to give an accurate picture. It does show some increase in 1934 over the profit of 1933. If the committee desires it, I will give the figures.

The CHAIRMAN. Very well; put them in the record.

Mr. VINCENT. For these 23 companies, the net profit return on net worth, 1933, 2 percent; 1934, 3.9 percent.

Senator KING. That is on 23 companies?

Mr. VINCENT. Yes, sir; 23 only.

Senator KING. Where are those companies?

Mr. VINCENT. The names are not given.

Senator KING. Are they in the metropolitan district of New York?

Mr. VINCENT. That is not indicated.

Senator KING. You have no information as to that?

Mr. VINCENT. No. I think it is quite an inadequate picture myself.

Senator KING. Have you anything to show the profits in 1925, 1926, 1927, 1928, and 1929?

Mr. VINCENT. No, Senator; I have not.

The CHAIRMAN. Proceed, Mr. Vincent.

Mr. VINCENT. The next question was on the percentage of increased production since the shortening of the hours. We have no collected data on that for the entire industry. Production data could be derived from two basic sources, one of which is the number of garments cut, and the other is the sale of labels.

Senator KING. You mean shortened hours and at the same time put on more employees?

Mr. VINCENT. That did occur. The label sales for the period of January 6, 1934, to March 24, 1934, was 22,761,263. For the same comparable period of January 5, 1935, through to March 23, 1935—these are by weeks—27,039,158, which shows a substantial increase.

Senator KING. The contention of N. R. A. as a justification for prolongation of its life is that industry has been increased, or that industrial production has been increased, is it not?

Mr. VINCENT. In this industry that is true very definitely. The diminishing trend of employment and production has been arrested

and put into reverse. The spread of employment as represented by the figures of 109,000 in 1933 to 140,000 at the present time, and the figures I gave you, indicate an increase in production.

I may add to that, that the industry is now in need of, and on March 12 was granted an exemption from hours limitations to the extent of an additional 4 hours per week for a period of 5 weeks to meet market demands.

Senator Black asked whether we had any complaints from any unit or units in the country to the effect that by shortening hours to 36 hours, there had been created a scarcity of labor. We have no complaints of which I have knowledge, of that nature. The need for additional time indicates that there has been an absorption of surplus labor, and the reports to us from the code authority are that the surplus skilled labor available at this time has been absorbed except in the markets of Chicago, Rochester, and to some extent Philadelphia. That is the nearest answer that I can make to that question.

I was asked also, Senator King, respecting the distribution of the industry. The industry is distributed into 29 States. For instance, California has 105 plants, and in 28 other States you will find the industry dispersed.

In the percentages concerning which you asked yesterday and which I was not able at that moment to give you definite data on, I will say that New York and the surrounding area account for 39.6 percent of the area measured by production. I should say, however, that that 39.6 percent includes a very substantial quantity of cut piece goods which are sent out into the States of New Jersey, Connecticut, Pennsylvania, and Maryland, and as far south as North Carolina, to be made up.

Senator KING. Do you know what proportion of the 39.6 percent consists of garments which are sent out and being cut?

Mr. VINCENT. I cannot give you that.

Senator KING. You do not know?

Mr. VINCENT. No, sir; I do not. Then there is Philadelphia, 10.38 percent; Chicago, 7.56 percent; Rochester, 3.18 percent; Cincinnati, 4.55 percent; Baltimore, 6.95 percent; St. Louis, 2.06 percent; Cleveland, 6.26 percent; Boston, 2.71 percent. That group makes a total of 82.91 percent. The remaining 17.09 percent represents the remainder of the industry.

Senator KING. What your organization calls the "hinterland"?

Mr. VINCENT. Yes. I might say Colonel Curlee's reference to the hinterland justifies this observation. His association does not represent some of the operations, for instance, South Carolina, Tennessee, California——

Senator KING (interrupting). He did not contend that it did.

Mr. VINCENT. I am just pointing that out. What he calls the "hinterland" includes such communities as Baltimore, St. Louis, Cincinnati, Cleveland, and Boston.

Senator KING. Did he not take the name of "hinterland" from the nomenclature of your organization, the N. R. A.?

Mr. VINCENT. Not my organization.

Senator KING. The N. R. A.?

Mr. VINCENT. The first use I heard of the word was by Colonel Curlee. You may be correct. He may have derived it from other sources.

Now, if I may turn a moment to that organization, Colonel Curlee was asked respecting the membership. I requested Colonel Curlee at the hearing in the early part of February to ascertain at the request of the code authority, the attitude of his members and those that were active in the association. He sent at my request a telegraphic communication to 71, as he reports to me by letter of February 8, in which he stated in his wire, "This association is energetically opposing classified wage amendments and continues to maintain temporary headquarters in Washington"—and then he outlines three forms of answer.

His letter of February 8 to me states that of the 71 members to whom he sent the wire, 58 replied that they were opposed to the proposed new wage rates which involved increases; 1 replied that he was opposed in principle, and that 2 replied that they favored the amendment, and 10 made no reply at all.

I can supplement that information by a list of 11 names, members of Colonel Curlee's association, who have approved and endorsed the proposed amendments. The names of those firms are as follows——

Senator KING (interrupting). Do you mean amendments to the code?

Mr. VINCENT. Yes. These firms are Joseph & Foster Co., Michael Stern & Co., Kellerman, Heuman & Thompson Co., M. Weill, Inc., Leopold Morris Co., Fort Wayne Tailoring Co., J. Kopp & Sons, Ltd., Sonnenborn Bros., Meyers, Seaman Co., Lasly Brothers, and Epstein, Frank & Lockner, Inc.

Those represent at this time an employment of 6,999 employees. The group represented by Colonel Curlee numbering according to these figures 59 firms, employ at this time in round numbers 20,000 of the approximately 140,000 now employed in the industry.

If I may turn now to the two or three remaining exempt items to which Senator La Follette called my attention just as we took the recess yesterday, and which were referred to by Colonel Curlee in his testimony, I will give you the facts in the Bloch case, which he characterized as one of those cases in which three different sales in three different amounts for additional wages were rendered by the code authority.

The Bloch case bill was $37,000, and the company made a claim that it should be reduced by an allowance for waiting time.

Senator KING. Pardon me. Was not the first claim $21,000, and then the second $37,000, and the last $16,000?

Mr. VINCENT. No; $37,000, Senator, was the first.

Senator KING. Yes; pardon me. The first bill was, as the record here shows in the green book for 16 weeks ending March 24, 1934; then the second bill, a 21-week period ending April 20, 1934, $37,000. I am not giving the odd numbers. Then the present demand of $16,000.

Mr. VINCENT. That is inadequate in its omission of the facts. The bill was $37,000. By letter, copy of which I will hand in to the record, the company was advised respecting this claim for waiting time, that it would be given an allowance which was done by the staff. Mr. Drechsler, counsel for the staff, on the day that the bill was rendered, advised the staff that it had no such power, that that power was solely with the 2 (d) committee and the $21,000 bill, Senator King, and the $37,000 bill went out on the same day, one to

correct the other, because the staff had been under the misimpression that it had that authority to make an allowance for overtime.

Subsequently the Bloch Co. asked for and received a hearing before the 2 (d) committee, resulting in an allowance for overtime based upon the showing it made, and the final billing was as stated in the green book, for $16,000. The matter is now before the Compliance Division.

I desire to call the committee's attention to the Sinsheimer case——

Senator HASTINGS (interrupting). Have you any evidence there to show that the statement made by Senator King and read from that book is incorrect?

Mr. VINCENT. I made a personal investigation of it, Senator.

The CHAIRMAN. We believe it is not so material.

Senator KING. There was a bill sent out for $21,715.

Mr. VINCENT. And for $37,000 on the same day.

Senator KING. And then for $16,000.

Mr. VINCENT. Quite true. The matter is now before the Compliance Division.

(The letter referred to is as follows:)

The BLOCH CO.,
Cleveland, Ohio.

DEAR SIRS: I have just returned to the office after an absence of several weeks on account of illness, and have before me the report made by our accounting department based on the report made by our investigator and the information with which you have furnished us in your letters of January 19 and March 5.

We note that you state in the week ending May 27, 1933, 4.67 hours were required to make a coat, and during the 4 weeks ending October 28, on the average 3.86 hours were required to make a similar coat. We believe that these figures are directly comparable. We have tested it by taking into account the 20-per-cent increase that you made in piecework rates to compensate for the change in hours from 44 to 36, and the $1.50 per week, which amounts to 4.17 cents per hour, and which you are now paying to each worker in the form of a horizontal increase or bonus.

The difference in labor costs between these two dates, taking into account the average wages that you reported for the week ending May 27, 1933, and for the month of October, is almost exactly accounted for by these changes in piecework rates and in the weekly bonus. Our computations are as follows:

Labor cost, coat unit	May 27, 1933	Month Oct. 1933
Average earnings per hour	$0.315	$0.525
Number of hours required for making a coat	4.67	3.86
Labor cost per coat (average earnings per hour multiplied by number of hours required to make a coat)	$1.471	$2.0265
20 percent increase to compensate for reduction in hours from 44 to 36	.294	----------
Increase in cost by reason of bonus of $1.50 per employee (4.17 cents per hour multiplied by 4.67, number of hours required to make a coat)	.1935	----------
Total equated cost	1.9585	2.0265

The difference between $1.95 and $2.02 is undoubtedly accounted for by those increases which you made in the earnings of the lower-paid sections to bring them up to the minimum.

You report that the number of hours required to make a suit for the week ending May 27 was 6.44; for the 4 weeks in October, 5.47.

The amount of waiting time by reason of lack of work would be, therefore, 17.7 percent.

The average wage of the lowest substantial class for the week of May 27, the week selected as being representative of conditions prior to July 15, was reported by your investigator at 18 cents per hour. This figure was determined by our investigator upon examination of your pay roll.

If the amount of waiting time, as above determined, is taken into account, the average wage of the lowest substantial class should be increased from 18 cents per hour by 17.7 percent, or to 21.9 cents per hour.

In determining the amount of differential due the higher-paid classes under article II (b), you are entitled to receive credit for the increase of $1.50, or 4.17 cents per hour, so that the average rate per hour should be increased to 26.13 cents, or $11.50 on a 44-hour basis. The amount of difference required to be maintained under article II (b), which has not been paid to the workers, is, therefore, $2.90 per week or 8 cents per hour. This is the amount that should have been paid to workers included within the higher-paid classes, as provided for under article II (b), since November 20, 1933. We have calculated the deficiency in payments due said workers from your pay-roll records for the 16 weeks ending March 24, as submitted to us, and the deficiency amounts to $21.715.52.

I shall be very pleased to discuss any phase of this matter with you personally so that we may secure a fair and equitable adjustment of the requirements under the code. If there is any additional pertinent information to which we have not had access and which would enable us to arrive at an early adjudication of this matter, I would appreciate it if you would put this information at my disposal so that it could be considered fully to the end that we may arrive at a solution within the letter and spirit of the code.

Very truly yours,

MEN'S CLOTHING CODE AUTHORITY,
———— ————, *Executive Director.*

Mr. VINCENT. The Sinsheimer case is an instance in which the code authority billed the company for deficiency wages in the sum of $45,000, and by letter of April 20, 1934, a copy of which I have before me and will put into the record, this statement was made by the code authority——

Senator KING (interrupting). Pardon me. I do not see in the Green Book anybody by that name.

Mr. VINCENT. It was testified to here by Colonel Curlee, and I do not know that it is in the Green Book. It is one of the items that he testified to.

Senator KING. Yes; I find it on page 33, but not on page 34. You may proceed.

Mr. VINCENT. The code authority stated this respecting that bill of $45,000. [Reading:]

Against this amount you are to be credited for those increases made in wage rates to all manufacturing employees who appear on your pay roll as receiving more than $6.16 per week in the Cincinnati shop and $5.28 per week in the New Albany shops, during the week of July 11, 1933, which were required to bring them up to the minimum fixed in the Men's Clothing Code.

The subsequent change in the amount was due to the fact that the company had not at the time this bill was sent furnished the necessary data, and it was given the privilege of doing so, and when that was done the bill was revised accordingly.

May I say for the information of the committee that that charge of noncompliance, with five others, is now covered in an agreement in which those six concerns have agreed with the compliance division and the division of research and planning to pay the deficiency wages, if it is due, amounting to many thousands of dollars. Those six firms happen all to be members of Colonel Curlee's organization.

(The letter referred to is as follows:)

APRIL 20, 1934.

Mr. GEORGE HENRY,
H. A. Seinsheimer Co., Cincinnati, Ohio.

DEAR MR. HENRY: Our accounting department has analyzed the amount of underpayments under article II, subdivision (b), of the Men's Clothing Code for the pay-roll period beginning with the week ending November 27, 1933 through

the week ending February 2, 1934. The number of workers by shops, the number of hours they were employed, and the total amount of the deficiency are as follows:

Shop	Number of employees	Hours	Deficiency
Cincinnati Coat Shop	199	60,013 1/10	$11,222.43
New Albany Coat Shop	329	85,506 1/4	16,246.24
New Albany Pants Shop	255	65,286 3/4	12,404.48
New Albany Vest Shop	125	29,260 3/4	5,559.54
Grand total	908	240,067 1/10	45,432.69

We have calculated that the wages of each of your manufacturing employees receiving more than the average of the 20 percent lowest paid substantial classes and less than $30 a week last July, but excluding cutters and off-pressers, should have been increased by the following amounts: $8.24 a week, or $0.187 an hour, for each week or hour worked in Cincinnati shop of your company since November 20, 1933; $9.12 a week, or $0.19 an hour, for each week or hour worked in the New Albany shops of your company since November 20, 1933.

Against this amount you are to be credited for those increases made in wage rates to all manufacturing employees who appear on your pay roll as receiving more than $6.16 per week in the Cincinnati shop and $5.28 per week in the New Albany shops, during the week of July 11, 1933, which were required to bring them up to the minimum fixed in the Men's Clothing Code.

The horizontal increases made of 20 percent in the Cincinnati shop of 30 percent in the New Albany shops, may not be considered in the calculation of deficiencies under article II, subdivision (b), because such increases served to compensate workers for reduction in hours in the New Albany shops from 48 to 36 hours, and in the Cincinnati shop from 44 to 36 hours.

In order to calculate and determine definitely the amount due to each worker, it will be necessary for you to submit to us your pay roll for the week ending July 15, together with the names of all persons included on that pay roll and those persons who were on your pay roll subsequent to November 27. The pay-roll report for that week will also permit us to advise you definitely the minimum amount each worker is entitled to under the provisions of the code. When these points have been determined we would expect to have you cooperate with us in distributing to the workers whatever might be due them.

I shall be very pleased to discuss any phase of this matter with you personally so that we may secure a fair and equitable adjustment of the requirements under the code. If there is any additional pertinent information to which we have not had access and which would enable us to arrive at an early adjudication of this matter, I would appreciate it if you would put this information at my disposal so that it could be considered fully to the end that we may arrive at a solution within the letter and the spirit of the code.

Very truly yours,

MEN'S CLOTHING CODE AUTHORITY.

Senator HASTINGS. Tell me this: Is it not possible for the person who makes that investigation to ascertain from the employer, all of these facts so that he can make out an accurate bill instead of putting the employer to the trouble of coming to Washington and proving that the statement made by the investigator is not correct?

Mr. VINCENT. That is true now, but it was not true, because the code authority was compelled to get the pay rolls during an agreed week in July in order to determine what the differential should be, and in many cases the concerns did not keep accurate data, and the check-up had to be made from the factors that were available; in other words, it was a search for the best evidence, and the code authority had to rely upon the industry for that data. Some of them kept no records of hours, and some of them destroyed their pay rolls——

Senator KING (interrupting). That is, you went back to the pre-code days, as the basis?

Mr. VINCENT. It was understood that the week nearest to July 15 would be the week.

Senator KING. That was before the code?

Mr. VINCENT. Precode, yes; correct.

Senator KING. Then I suppose there were some differences of interpretation of the Herwitz formula, were there not?

Mr. VINCENT. In no single instance.

Senator KING. No differences of interpretation?

Mr. VINCENT. In no single instance.

Senator KING. Were different interpretations promulgated by the code authority?

Mr. VINCENT. In no instance.

Senator KING. Proceed.

Mr. VINCENT. The little St. Louis case, Greenspoon, to which Colonel Curlee referred, a deficit of $35.06 which he said went before the 2 (b) committee.

Senator KING. That was not a 2 (b) case. It was a charge of failure to pay the minimum rate. Colonel Curlee personally appeared before the 2 (d) committee and asked it to hear that case. Assuming that it was a 2 (d) case, it heard it. Upon being advised by the staff that it was a minimum-wage case, it discontinued consideration of it, and the man himself was not called to New York, but the code authority representative waited upon him at his place of business in St. Louis.

May I take up next the McCransky case, which is the case, if you recall, where an exemption was made from the prohibition against consignment of sales. If I recall the statement, it is that the McCransky firm was granted an exemption by the code authority.

The facts are that the code authority disapproved the exemption and sent its disapproval to the administration. The deputy administrator then in charge found that this concern had for a long period of years used the consignment selling basis or terms of sale exclusively, and it was deemed a possible hardship to compel this firm to undergo a readjustment without an allowance of some reasonable period, and an exemption was granted pending an investigation.

During that exemption period an investigation was made, and it was found that the number of firms that the McCransky Co. still supplied merchandise to on this consignment sales basis had been reduced to 133, which represented at that time only about 20 percent of their business. They had made quite rapid progress.

Incidentally, I may state that there were about 800 employees whose employment was involved when this exemption was granted.

This latter report was made after I became deputy administrator, and I recommended an exemption as to these 133 until July 15, 1935. I have a subsequent report that 17 of those names have been eliminated from that list of 133.

Those are the circumstances under which the exemption was granted. It was over the disapproval of the code authority and for reasons which the administration deemed in that particular instance sufficient.

I think I should add to that, that recently Colonel Curlee wrote me saying that he had complaints from a certain member or members of the industry that that exemption was operating injuriously to such members. I invited him to file the showing, saying that if such were

the facts, the exemption would be terminated, or at least I would recommend the termination. He answered that it would be useless to present the facts. I thereupon advised the McCransky Co. of the necessity for its making a showing of the present state of those accounts, and the reasons why the exemption should not be terminated.

Colonel Curlee also referred to the exemption from the prohibition of consignment sales provision granted to Hickey Freeman and Cohan Goldman Cos. The facts are that this exemption was of no interest to these firms. It involved one firm in Cleveland, Ohio. I do not like to take the time of the committee and would not except that it constitutes a part of the misimpressions that have been created here. It involved the firm of W. B. Davis, the head of which is a man well past 80 years of age, whose manager has recently died, whose credit was undermined, and whose business is now in the hands of a committee of his employees, and he asked these people to supply him merchandise on a consignment sales basis. They were not interested in it as a piece of business but were willing to give this credit in this particular instance if there was no objection on the part of the administration. The code authority raised no objections and for the reasons I have stated, the exemption was granted.

I think that this is another case in which, not that there has been made a technical misstatement, but an omission of facts which creates a misimpression.

Senator HASTINGS. Tell me what that exemption was. I did not hear it all.

Mr. VINCENT. It was an exemption granted the firms of Hickey Freeman & Co. and Cohan Goldman Co. from the prohibition against selling on consignment and permitted them to ship goods on consignment to this one house in Cleveland, Ohio, W. B. Davis.

Senator HASTINGS. You mean the code does not permit goods to be shipped on consignment?

Mr. VINCENT. The code prohibits consignment sales, yes, for the purpose of standardizing terms of sale.

I should like to turn just for a moment, Senator King, to the reference that Colonel Curlee made to the use of labels as an instrument of boycott. In a brief filed by the Industrial Recovery Association of Clothing Manufacturers—that is Colonel Curlee's organization—with Dr. Lindsay Rogers, then the deputy administrator for the Men's Clothing Industry, Colonel Curlee's association makes this statement respecting the use of labels. This was prior, you understand, to the adoption of the code and during the code hearings. [Reading:]

> Section IV of the U. S. A. Code provides further that manufacturers shall be required to affix to each garment a label indicating that such garment was manufactured in compliance with the provisions of the clothing industry code. It is contemplated that all clothing manufacturers will subscribe voluntarily to the code, or that the administrative agency will enforce such provisions in the event of noncompliance. We do not object, however, to any reasonable requirement for additional labeling of garments, provided that such labeling as is required is not excessive in cost in relation to the low-priced garments fabricated by manufacturers in group B.

Those groups were divided into A and B for convenience in reference.

I desire to leave that with the committee to show that Colonel Curlee and his organization endorsed and approved the adoption of

labels as a means of identifying garments made in compliance with the provisions of the code, and specifically for the purpose of asking compliance. That was his position at that time.

Reference was also made by Colonel Curlee to an operating agreement which was said to be one of the reasons why the Industrial Recovery Association could not join the U. S. A. Association, because this operating agreement conferred upon the directors of the U. S. A. Association absolute power to make terms and agreements respecting hours and wages, and so forth. For the information of the committee, here is a copy of that agreement.

The CHAIRMAN. That may go into the record.

(The agreement directed to be included in the record will be found after the close of the day's session.)

Mr. VINCENT. It in no sense provides that that association shall represent the members in dealing with the employees in any plant or in the making of a uniform agreement. That operating agreement was made prior to the passage of the National Industrial Recovery Act, but while it was pending, and that act is referred to in the operating agreement and anticipating its passage, and that the President would be authorized to make agreements with industry, and this operating agreement authorized this association to bind its members in making an agreement with the President of the United States under the act if and when the act was passed.

Senator KING. That is the agreement, is it not, that is referred to on page 104 of the Green Book which is already in the record?

Mr. VINCENT. I cannot remember the page. I think your reference is probably correct, Senator, yes, but the purpose of that agreement was wholly different than that which is indicated when it is indicated in a description of it that it authorizes this association to make contracts for a member with that member's employees. Such is not the case.

Senator HASTINGS. Just a minute. Paragraph IV says [reading]:

> The association, in the absolute discretion of the board of directors, may prepare standard terms or agreements to be utilized and put into practice by every member, to cover maximum hours of work for each day and the number of work days each week, and the minimum rates of pay, and such other working conditions as may be desirable to obtain the benefits of the Industrial Recovery Act for the clothing industry. The members agree to accept and execute such agreements, as individual contracts; or, in the discretion of the association, to be bound by a general agreement of the association, and such agreements shall be binding upon all of its members as effectively as if each had executed the collective agreement for himself.

Mr. VINCENT. That is quite true, Senator, and it was intended as the authority to contract for those terms with the President.

Senator HASTINGS. I thought when you started in your statement with respect to that, that you said it did not do that sort of thing.

Mr. VINCENT. No. Insofar as the contract with the President is concerned, it does, but not otherwise.

Senator KING. It states, does it not, that the association in the absolute discretion of the board of directors may set up a bureau of adjustment to settle all matters involving codes of ethics and proper trade practices. So that it went further than you state. It is before us, however, and we can interpret it.

Mr. VINCENT. It was intended to authorize the association to make a code or an agreement with the President or to do anything which the National Industrial Recovery Act authorized.

Senator HASTINGS. Was that not the point which Colonel Curlee made?

Mr. VINCENT. No; I think the impression was that it was intended to subject all members of the association to collective agreements which the association might make with the employees of a particular member in its plant.

The CHAIRMAN. All right; we will interpret it.

Mr. VINCENT. I now desire to call attention to the testimony of Colonel Curlee respecting the pending amendments that were heard February 1, 2, and 4. I shall not recount Colonel Curlee's testimony, but as indicating the attitude of the association toward the code, I shall file here with the committee eight proposed amendments of the Industrial Recovery Association which were filed with me, three of which relate to the wage provisions of the code and were heard at the same time early in February when the amendments proposed by the code authority were heard.

The first of these amendments is as follows:

First. That all wage provisions other than that for the minimum wage be deleted.

Second. That those provisions of article XIII dealing with reports be so amended as to limit the information required in such reports to the following items:

(a) Number and character of garments cut.
(b) Total number of employees.
(c) Total man hours of labor utilized.
(d) Total pay roll.
(e) A certificate that no employee was paid less than the minimum wage provided, nor employed more than the maximum hours provided by the code.

So that the matter of the code authority's information as to whether there had been compliance or noncompliance would rest upon the certificate of the member. We have found and the code authority has found that there is an economically rebellious and lawless minority that will not disclose the facts, and in order to safeguard the majority in the industry and the workers in the industry, it has been found necessary to require pay roll reports so that they may be available for analysis in checking whether or not there has been a compliance with wage provisions.

Senator COSTIGAN. Mr. Vincent, if you know, was the first amendment read by you designed to bring about conditions under which higher wages would be reduced to the minimum?

Mr. VINCENT. The language is that all wage provisions other than that for the minimum wage shall be deleted, and the effect would be, speaking from our experience in many instances, that in many instances the minimum would become the maximum wage unless the workers in the industry were protected by classified basic minima as now is provided in the men's clothing code.

Mr. VINCENT. While on this subject, I shall not take the time of the committee to read the remaining amendments but——

The CHAIRMAN (interrupting). Put those in the record.

Mr. VINCENT. I desire simply to put it in the record, but I do desire to add to my statement that the amendments offered by the code authority were proposed by the industry members, and the wage committee on the code authority of the labor members of that committee, and they called for certain increases in minimum rates when those increases, if the amendment is approved and adopted and

becomes a part of the code, will still be less than the average hourly rate now paid throughout the industry.

(The further proposed amendments submitted by the Industrial Recovery Association are as follows:)

Third. That those provisions of article XIII dealing with the authority and power of the code authority to examine books and records of employers be limited to an inquiry as to wages, hours, and amount of production.

Fourth. That the provisions of article XIII, providing for the confidential nature of data filed by employers or obtained by the code authority, be amended so as to make all such data available to any employer in the industry.

Fifth. That neither the Administrator nor the code authority shall have power to exempt from the operation of the code, in whole or in part, any manufacturer or class or group of manufacturers.

Sixth. That article II be so amended as to make the definition of North and South conform with economic, historic, and geographic realities.

Seventh. That the code be so amended as to make rational provision for a limited apprenticeship for beginners and learners, and that such provision be applicable to the whole industry and not to a favored few.

Eighth. That article II (f), limiting the amount of production, be deleted, because in actual practice it has served no useful purpose but has been made the basis of abuses by the code authority.

Ninth. That article V, providing for labels, be deleted.

Senator LA FOLLETTE. Mr. Vincent, what would be the effect of that proposed amendment to which you have referred concerning the statistical and other information collected by the code authority? Would it expand and make available more information than is now available or less?

Mr. VINCENT. Not more, but more readily available, if the amendments proposed by the code authority were adopted.

Senator LA FOLLETTE. No. I understood that you read some amendments which had been proposed by the Industrial Recovery Association?

Mr. VINCENT. Yes.

Senator LA FOLLETTE. And I understood one of them was in reference to the information that was to be collected by the code authority.

Mr. VINCENT. I misunderstood your question, Senator; excuse me.

Senator LA FOLLETTE. What would be the effect of the amendment proposed by the Industrial Recovery Association? Would it result in obtaining more or less information than you are now collecting and making available?

Mr. VINCENT. Less information.

Senator LA FOLLETTE. I cannot quite understand that, because it seemed to me that a large part of Colonel Curlee's testimony was devoted to the fact that you did not make enough information available now.

Mr. VINCENT. That was his contention.

Senator LA FOLLETTE. There seems to be a little inconsistency there, does there not?

Mr. VINCENT. I take the attitude of the Industrial Recovery Association members who are adhering to it is not consistent with the act. At every appearance before a deputy administrator or other hearing, the first step is invariably to reserve rights of challenging the constitutionality of the act and the validity of the code and the legal application of the provisions. I think I am not unfair if I say that the association seems to regard the depression as entirely con-

stitutional and any measures taken to remedy the situation as quite unconstitutional.

Senator KING. Is that a fair statement?

Mr. VINCENT. I think that is a fair statement.

Senator KING. You think that a man who challenges the constitutionality of any provision of the N. R. A. is not only lawless but he is in favor of the depression?

Mr. VINCENT. No; but when he violates a law before he has tested its constitutionality and has violated the provisions of a code which has lawful effect, I think I find justification for my statement, Senator.

Senator BLACK. May I ask you a question there? I see it has been charged in some of the papers that the N. R. A. itself has endeavored to present a legal decision by the Supreme Court. Do you know of any such effort?

Mr. VINCENT. I do not know of any such effort.

Senator BLACK. You agree, do you not, that in a matter affecting so many people and of such widespread importance, that there should be an authoritative decision at as early a date as possible.

Mr. VINCENT. Naturally. And I think that any person affected by it has a right in a proper proceeding to question the constitutionality.

Senator BLACK. You are not opposing that idea in the suggestion that you make?

Mr. VINCENT. Certainly not.

Senator HASTINGS. Was there not a case in Alabama, where the code authority took an opinion to the Supreme Court, and was that appeal not dismissed within the past 2 days by the Government?

Mr. VINCENT. Senator, I do not know. I have not concerned myself with legal matters; and I have been so constantly occupied by administrative work that I have not endeavored to follow the legal actions involving it. Occasionally I read of one, as others do, in the press, but I would not be able to answer you with information on the subject.

Senator HASTINGS. You did see in the public press that particular comment and the comment upon that particular case?

Mr. VINCENT. No; I did not. Someone yesterday mentioned it in a conversation, but that is all the information I have on it.

The CHAIRMAN. I think it can be admitted that it was in the press that the Belcher case was dismissed. Proceed.

Mr. VINCENT. That, I think, Senator, covers the facts to which I desire to direct the attention of the committee, except a brief covering statement that will not occupy more than 4 or 5 minutes which I should like to read if I may.

The CHAIRMAN. Proceed with that then.

Mr. VINCENT. I feel that I should make this because of my intimate acquaintance with the functioning of the Men's Clothing Code Authority.

Senator KING. May I ask how long you have been with this organization?

Mr. VINCENT. I came in in February 1934, but I have only been deputy administrator in charge of this industry and some other apparel industries since November.

The CHAIRMAN. What was your background before you took this position, Mr. Vincent?

Mr. VINCENT. Senator, I was for many years a practicing attorney in Colorado. During the past 6 or 7 years previous to my present occupation I was vice president and general manager of the Rocky Mountain Fuel Co.

Senator COSTIGAN. You were also president at one time of the Colorado Bar Association?

Mr. VINCENT. Yes, sir, Senator; I was.

The CHAIRMAN. Had you had any practical experience in this clothing manufacturing business?

Mr. VINCENT. Not until my experience here, Senator.

The CHAIRMAN. You seem to have acquired a lot of information in a very short time.

Mr. VINCENT. I may say that many of the basic problems in all industries are identical, and others are very closely allied. You will find industrial and economic problems running through all of them of a very similar nature.

The CHAIRMAN. We will be very glad to hear your concluding statement that you stated you wished to read.

Senator GORE. Just a moment. That case referred to by Senator Hastings—was that the Keyes case?

The CHAIRMAN. The Alabama Lumber case.

Mr. VINCENT. If you will pardon me, I have forgotten something. I have some items here that I intended to just put into the record.

Senator BLACK. Is that the information that I asked you to bring?

Mr. VINCENT. No.

Senator BLACK. You have already given that, I understand.

The CHAIRMAN. Mr. Vincent, can you not put that which you are looking for in the record? We have to get on with another witness this morning.

Mr. VINCENT. Very good. What I wanted to put in the record was this: A copy of the report that I made on the procedure of the Men's Clothing Code Authority in August last year, with reference to the Greif case at the time it was pending in court. I shall submit a copy into the record, and I desire to say that I assume full responsibility for the accuracy of the findings and the conclusions made in that report.

The CHAIRMAN. Very good.

Mr. VINCENT. The administration of the Men's Clothing Code has made itself responsible for a vigorous yet impartial enforcement of the labor provisions of the code. The code authority has cooperated and has among other things set up a statistical reporting system which will make available for the use of the industry industrial data that is essential to a well-organized and functioning industry.

A majority of the management group and the labor groups are organized. The voluntary, contractual relations which had existed previous to the code between a large section of the management and labor groups have been continued and extended to include greater numbers, both of management and labor. They have accepted the permissive provisions of the National Industrial Recovery Act and have established rational, dignified and common-sense relations. The result is an effective type of united action which the act expressly contemplates.

The uniform hours and basic minima wage provisions established by the code constitute a long step toward stabilized labor costs and

more fair competition. These provisions have also very substantially increased, for the industry as a whole, wage rates and earnings.

The trends of diminishing employment, earnings, and production have been arrested and reversed. Shorter hours have spread employment; employment has increased from approximately 109,000 to 140,000. Mortality in the industry has sharply declined. This is a fairly definite index of increasing profits and financial stability.

Senator LA FOLLETTE. You mean by "mortality" failures of concerns?

Mr. VINCENT. Failures of concerns, Senator, yes.

But Colonel Curlee charges that a continuance of N. R. A. and code administration threatens economic death and that his company lives in fear and trepidation.

What are the facts of his own company's experience? Since the approval of the men's clothing code he reluctantly concedes the fact that his firm has increased wages more than 50 percent; that it has increased employment; that production has not only increased but that his company has made a larger profit in 1934 than it made in 1933.

Colonel Curlee's charge that the National Industrial Recovery Act and code administration threatens industry with economic death was not supported, nor was an attempt made to support it, by data or other facts. On the contrary, your committee's cross-examination disclosed a distinct improvement in the conditions of this industry.

These improved conditions are in striking contrast with the debased and tragic working and living conditions that prevailed in many sections of the industry previous to the approval of this code. The sweatshop and homework have been outlawed; wage pay rolls and working hours are checked and code standards enforced; an economically lawless minority has been subjected to necessary restraints; public and private security are better safeguarded; the worker is no longer an unprotected victim of a fictitious individual right to contract under conditions which dictate the freedom of starvation or the acceptance of 4, 5, or 6 dollars per week for a week of 50, 60, and sometimes 70 hours. The worker now shares in the responsibility of a responsible industry, operating under safeguarding controls of a responsible government.

It is a fair and discriminating statement to say that Mr. Sidney Hillman and his associates, the members of the code authority, and the code authority staff, in a day to day administration of the men's clothing industry code, are furnishing an outstanding example of industrial statesmanship.

In conclusion may I say that while the men's clothing code authority is setting a notable example, they are but one of many industry groups that are furnishing striking illustrations of the possibilities to be realized under the National Industrial Recovery Act when all the provisions of the act are accepted and a genuine effort is made to comply with them.

Senator HASTINGS. Mr. Vincent, may I inquire whether, in your judgment, if Congress should fail to place in the new act a provision suspending the antitrust laws, it would in any way interfere with the operation of this code?

Mr. VINCENT. May I hear that again, Senator, please?

Senator HASTINGS. If the Congress in the passing of the new bill should eliminate from it that provision of the old law which suspends the antitrust laws, would it, in your judgment, as a lawyer, in any way interfere with the operation of this code?

Mr. VINCENT. Senator, I could only express my opinion. I do not think that price-fixing is a sound policy except in the natural resource industries; so far as I am concerned, I would personally welcome any additional safeguards that Congress may throw around the administration of the act by a closer adherence to the antitrust laws or by other provisions which limit administrative discretion, and reserve to Congress a larger degree of control. You understand I am simply expressing my personal views at this time.

Senator HASTINGS. With this code, as it is now written, would that provision stricken from the new law prevent its complete and reasonable operation?

Mr. VINCENT. It would in nowise affect the operation of the men's clothing code. They do not use price-fixing or any of the instrumentalities of price-fixing.

Senator BLACK. That has been about the most successful code that has been in effect, has it not?

Mr. VINCENT. I think it is a very striking example. We have some others, Senator however, that are very successful. I might name two other apparel codes. The coat and suit and the dress codes, which with men's clothing, employ something like 300,000 workers and have an annual dollar business of perhaps a billion and a half. They are doing very effective jobs of code administration. Some of the secondary or smaller ones that I could name are likewise doing a very good job.

Senator BLACK. In looking over the list of codes, itemized code by code, with reference to exemptions from the hours operations, I find that the clothing code alone seems to have no exemptions, according to this report made by the Brookings Institute. Is that correct?

Mr. VINCENT. Not exactly. There have been 18 exemptions applied for, if I remember correctly, 8 of which were granted. The others were granted for limited periods, or for some limited purposes, and very recently, as I indicated earlier, there is an exemption which grants an additional 4 hours per week overtime since March 12 for a period of 5 weeks.

There have been, if I remember, all told, 10 exemptions. Four of those were in New Orleans and one in Knoxville, granting a 40-hour week to some clothing houses down there, upon their representation early in the code administration that they were in direct competition with the 40-hour cotton garment code under which wash suits were made.

Senator BLACK. Those were individual exemptions. Are you familiar with this publication?

Mr. VINCENT. Do you mean general exemptions?

Senator BLACK. Yes.

Mr. VINCENT. Yes, you are quite right. I misunderstood your question.

Senator BLACK. Those codes are practically the only ones out of the six or seven hundred codes that do not provide for general exemptions lifting the number of hours that their business can operate.

Mr. VINCENT. I would not be able to submit any figures. Many of them have general provisions authorizing overtime in peak periods.

Senator BLACK. I found that only six did not.
Mr. VINCENT. I assume that that is correct.
Senator BLACK. Has it operated successfully?
Mr. VINCENT. I think measurably so.
Senator COSTIGAN. Senator Black, to what book were you referring?
Senator BLACK. I was referring to the book printed by the Brookings Institute, Hours and Wage Provisions in N. R. A. Codes, compilation organized by Leon C. Marshall, who has been with the Administration.
Senator BARKLEY. Let me ask you a question with reference to the antitrust laws. Of course, there are many questions involved in them besides price-fixing. There are many practices that come under the denunciation of the antitrust laws. If we omit the provisions now in the law suspending the operation of the antitrust laws, insofar as they are suspended under the law, what effect would that have on the willingness of a man or institutions to go into codes and form code agreements with reference to anything that might be interpreted by some court as a restraint of trade or interference with interstate commerce?
Mr. VINCENT. I think, Senator, and I can only give my personal impressions——
Senator BARKLEY (interrupting). I am speaking generally, not with reference to the men's clothing code or any other specific code.
Mr. VINCENT. I think there are many members of industry who believe that they need a greater degree of freedom in making trade practices than is permitted by antitrust laws. I say I believe there are many who feel that way about it.
Senator BARKLEY. Of course, there are circumstances under which men might be charged with the violation of the antitrust laws by reason of some agreements that they had entered into with somebody else or in unison.
Mr. VINCENT. Yes.
Senator BARKLEY. They cannot be described by statute, but they are described in general terms. I was wondering whether to repeal that provision of the law would defeat the object insofar as it holds out to the industries that are willing to enter into codes as to fair practices, and even limitation of hours and wages or other things that are the subject of agreement or cooperation, would feel that they could take the chance of being held without some degree of assurance that they would not be prosecuted by one department of the Government for entering into an agreement urged upon them by another department of the Government.
Mr. VINCENT. There are many trade practices which can stabilize, for instance, terms and conditions of sale and other provisions we might enumerate which industry conceivably might voluntarily impose upon itself and discipline itself to the point of making their application successful and yet in nowise be operating contrary to the provisions of the antitrust laws.
Referring now directly to the first part of your question, I think there is so much difference of opinion among industry members themselves, that I should hesitate to express it as to the degree of freedom which they think they want or need. I think there has been an overemphasis, perhaps, upon the subject of price-fixing in some of the industries. Some of them have not attempted to obtain price-

fixing powers nor cost accounting systems, nor cost formulas which could be used as instruments for price-fixing.

Others, faced with a very demoralized market and unable to obtain voluntary stabilization of market practices, have felt it was indispensable that they have some greater degree of freedom in setting up trade practices. I think perhaps the experience we have had indicates in some instances, at least, that frequently there is a belief that if a cost-finding system is permitted or some cost formula approved by which costs can be ascertained and set down as a floor for price-making, that their problems will be solved. We have instances, however, where although industries were given such instruments, they were not able successfully to use them.

Senator BARKLEY. What about some of the code provisions in some of the codes, credit provisions, which stipulate the terms upon which credit should be given to the general public or to individuals or firms or corporations by those who have things to sell.

Mr. VINCENT. You mean the granting of credit?

Senator BARKLEY. The granting of credit.

Mr. VINCENT. I know of no such instances. I have had only one application made to me, and, of course, answered that, as far as I was concerned, it was quite impossible to consider it. I do not know of any instances in which credit control has been granted, although that may be true.

You understand I am speaking from the limited information I have arising out of my relationship to the apparel codes.

Senator BARKLEY. I understood that in the oil code there was a provision that those who purchased oil, whether locally or through interstate commerce, who had not paid their previous monthly bill by the 15th of the following month, would not be permitted to buy any more oil on credit. That may be a salutary provision from the standpoint of business, but I wonder whether such a provision could have been included in an agreement among all of the producers or distributors of oil without the possibility of being held in violation of the antitrust law in that it might restrain trade by restraining somebody who might be individually willing to grant further credit to a purchaser but who could not under the code do so, because there was a provision of that sort in it.

Mr. VINCENT. In the manufacturing codes I would say that such a provision, irrespective of its legality or illegality is quite unnecessary to successful code administration.

Senator BARKLEY. I do not know that that sort of a provision was in any other code, but I do understand it was in the oil code.

Senator COSTIGAN. Mr. Vincent, about how many employees are engaged in the men's and women's clothing industries?

Mr. VINCENT. In the apparel industries there are 36 codes that I have charge of, and there is something more than 500,000. There are about 1,900 industry members. Of the 500,000, about 300,000 are in three or four industries, in the men's clothing, the dress, and the coat and suit, and blouse and skirt industries. Those four, I think, represent 300,000 of the 500,000 workers that I have mentioned.

Senator COSTIGAN. With which of those industries is Mr. John Keating associated?

Mr. VINCENT. With the dress industry.

Senator BARKLEY. Are you a lawyer or business man?

Mr. VINCENT. I was at one time a lawyer, Senator.

Senator BARKLEY. So was I, at one time. [Laughter.]

The CHAIRMAN. Thank you very much, Mr. Vincent.

(The following documents were submitted by Mr. Vincent in connection with his testimony.)

MEMORANDUM

To: Mr. Sol A. Rosenblatt, division administrator; Mr. Dean C. Edwards, deputy administrator.
From: M. D. Vincent, assistant deputy administrator.
Subject: Memorandum on *L. Greif & Brother, Inc.*, v. *Men's Clothing Code Authority, et al.*, in United States District Court, Maryland District, re noncompliance with article II (b) and withholding of labels.

Following is my report on the above subject:

MEN'S CLOTHING INDUSTRY CODE

The Men's Clothing Code was approved August 26, 1933. Article II prescribes for manufacturing employees a minimum wage of 40 cents per hour in the northern section and 37 cents per hour in the southern section of the industry, with a weekly minimum of $14 per week in the North and $13 in the South. For cutters and off-pressers minima of $1 and 75 cents per hour, respectively, are fixed. Article II further provides—

"(*b*) The existing amounts by which wages in the higher-paid classes, up to classes of employees receiving $30 per week, exceed wages in the lowest paid substantial classes shall be maintained.

"(*c*) Any increase of the minimum wage made effective between the date of the filing of this code, to wit: July 14, 1933, and the effective date, shall be disregarded and shall have no effect in connection with determining the wages to be paid in the higher price classes as provided for in section II (*b*) above.

"(*d*) The Men's Clothing Code Authority may appoint a committee to supervise the execution of the foregoing provisions.

"(*e*) The provisions for the minimum wage established in this code shall constitute a guaranteed minimum rate of pay in connection with both a time rate or a piecework basis of compensation.

"(*f*) No increases in the amount of production or work shall be required of employees for the purpose of avoiding the benefits to employees prescribed by this code in respect of wages and hours of employment.

"All requirements in respect of such increases shall be reported to the Men's Clothing Code Authority."

Article V contains the following label provision:

"All garments manufactured or distributed shall bear an N. R. A. label, which shall remain attached to such garments. Such labels shall bear a registration number specially assigned to each manufacturer in the industry. The privilege of using such labels shall be granted and such labels shall be issued to any manufacturer from time to time engaged in the clothing industry upon application therefor to the code authority, accompanied by a statement of compliance with the standards of operation prescribed by this code. The privilege of using such labels and the issuance thereof may be withdrawn and cease or may be suspended in respect of any such manufacturer whose operations, after appropriate hearing by the Men's Clothing Code Authority and review by the Administrator, shall be found to be in substantial violation of such standards. Manufacturers shall be entitled to obtain and use such labels if they comply with the provisions of this code.

"The Men's Clothing Code Authority may establish appropriate machinery for the issuance of such labels in accordance with the foregoing provisions."

Article VIII is as follows:

"With a view of keeping the President informed as to the observance or nonobservance of this code of fair competition, and as to whether the clothing industry is taking appropriate steps to effectuate the declared policy of the National Industrial Recovery Act, each person engaged in the clothing industry will furnish every four weeks duly certified reports showing in substance:

"(*a*) Pay-roll data, showing by sex and occupation, number of people employed, number of hours worked, and the rates of wages paid.

"(b) Production data showing the number and type of garments cut and made up, in such form as may hereafter be provided by the Men's Clothing Code Authority.

"The Men's Clothing Code Authority as hereinafter provided is constituted the agency to collect and receive such reports."

Pursuant to the above section (d) of article II, the code authority appointed a committee commonly designated the 2 (d) committee to supervise and execute the provisions of the preceding sections (a), (b) and (c).

Article II (b) establishes minima for the classes of employees receiving up to $30 per week, based upon maintenance of the existing differential above the lowest paid substantial classes. When wages of this lowest paid substantial class are increased, the wages of those receiving up to $30 per week are by this provision correspondingly increased.

TWO MANUFACTURERS' ASSOCIATIONS

It should be explained before proceeding to a report of my investigation that manufacturers in this industry are divided into two organized groups. The Clothing Manufacturers Association of the United States contains a membership which represents a large majority of members of the industry and much the largest volume of business and number of workers. Most of the members of this association are working under union-labor contracts with the Amalgamated Clothing Workers of America. The other is the Industrial Recovery Association of Clothing Manufacturers, whose membership represents a minority in volume of business and employment, but includes in its membership a number of large representative concerns. A few industry members are not members of either association. L. Greif & Bro., Inc., is a member of the Industrial Recovery Association whose members operate nonunion or open-shop plants.

SCOPE OF INVESTIGATION

In view of the serious nature of the charges made by L. Greif & Bro., Inc., and the Industrial Recovery Association, and the Amalgamated Clothing Workers, in the hearings which will be hereafter mentioned, my investigation included:

Interviews with Maj. B. H. Gitchell, administration member of the Men's Clothing Code Authority; Mr. George L. Bell, executive director; Mr. David Drechsler, secretary and counsel; Mr. Herwitz, controller; Mr. Merrick, extending over many hours of several days.

A personal examination of code authority's files, records, and procedure in the Greif and similar cases.

Examination of transcripts of hearings of the Greif case held July 5, 1934, and July 10, 1934.

Data which the code authority prepared at my request on investigations, reports, analyses, complaints, and cases made, filed, adjusted, and pending under article II, section (b). These data are extended to July 31, 1934.

And code and trade association history.

References made to "organized", "unorganized", and "partially organized" markets, define organized labor areas and units of the industry, and unorganized or partially organized areas.

CODE AUTHORITY PROCEDURE

Code authority records show that during the early months immediately following the approval of the code, the code authority began taking a census of members, plants, shops, and employees of the industry in preparation for code administration and enforcement. Investigations of compliance with the provisions of article II (b) did not begin until late in December 1933. The first report of investigators in what I shall hereafter refer to as 2 (b) investigations, was made January 3, 1934. These investigations were made of plants and shops in different areas beginning in the Cincinnati-Cleveland, Milwaukee, and Chicago markets in the latter part of December 1933. The Cincinnati-Cleveland investigations under 2 (b) included such large plants as the Block Co., Joseph & Feiss, Richmond Bros. Co., and Piper Bros. Thirty-two other investigations of concerns were made in the same area in late December 1933 and early January 1934.

The Milwaukee investigations included Rice-Friedman and Cohen Bros.; in Chicago, Fashing Clothing Co., Sternstein Bros. In Chicago, Hahn Bros. Herbstman & Holtzer, Hawthorne Tailors, K & K Tailors, and G. Montanelli, were

investigated. Coincident with the above-mentioned December 1933 and early January 1934 investigations, 7 plants were investigated in Rochester, 3 in Buffalo, and 1 in Troy, N. Y. The large Curlee Clothing Co. and Knickerbocker Clothing Co. concerns in St. Louis, Mo., were investigated in January. Later in the same month Western Wholesale Tailors in Denver, Colo., were investigated. During February and to March 28, 1934, the Trimount Clothing Co.; Leopold Morse; Barron Anderson; Loventhal Bros.; and Harris, Griece Bros.; and a number of other concerns in Boston were investigated. Beginning early in February and during the same period 2 (b) investigations were conducted in such representative New York plants as Jaffee, Cohen & Lang and a number of contract shops. At the time of the foregoing investigations and on March 1, 1934, code authority investigators entered the Philadelphia area and investigated the following representative clothing manufacturing plants: Lob Hobbart, Pincus Bros., H. Daroff & Sons. Progressive Clothing Co., Silvertex Co. By April 8, 1934, investigators for the code authority had reported investigations of 144 plants and shops in the markets above mentioned, including many of the largest plants in the industry. These investigations and reports preceded the investigation and report on the 10 plants of L. Greif & Bro., Inc.

Proceeding to Baltimore in the latter part of March, code authority investigators investigated J. Schoeneman, Buchoff & Gordon, A. J. Miller, A. Uzmed, and on March 25 commenced investigating the Greif plants.

On and subsequent to April 8, 1934, code authority investigators reported on 226 investigations in various markets of the industry, including the Greif plants. Reports of investigations preceding and following April 8, 1934, numbered 370 and included both union and open-shop plants. 2 (b) investigations in each of the markets mentioned were made without any apparent discrimination, so far as the code authority records reveal, between unionized and nonunion plants, or as between members of one or another of the two associations.

Reports of these investigations under the code authority procedure are followed by an analysis in each instance of the report. In those instances in which the investigation and analysis disclose noncompliance with 2 (b), the concern is billed by the code authority with the amount found necessary to adjust and pay back wages due to employees. If the concern is dissatisfied with the computation and finding, opportunity is afforded for a hearing before the 2 (d) committee before further action is taken to enforce the finding by the code authority.

Analysis of the Greif investigation revealed noncompliance with article II (b) and on April 24, 1934, the code authority billed the member for back wages amounting to $35,785.91 found due to employees. L. Greif & Bro., Inc., made no response to the communication and request for adjustment. May 8, code authority again in writing called attention to the bill and requested compliance with the billing. May 10, the member responded by letter saying it did not understand the formula by which the computation of underpayment was arrived at. The code authority replied in writing by furnishing the member with a statement of the formula and taking the instance of one employee, analyzed the data to explain the basis of the analysis, finding, and billing.

With this explanation, photostatic copies of work sheets were sent to the member with the suggestion that the member appear before the 2 (d) committee to show in what respect, if any, the code authority's bill or its computation and findings were inaccurate or inequitable. This invitation was confirmed by Executive Director Bell, in a telephone communication to a member of L. Greif & Bro., Inc., and by Mr. Herwitz, controller, who personally visited the firm at its office in Baltimore, Md., according to statements made to me by both Mr. Bell and Mr. Herwitz.

Mr. Bell and Mr. Herwitz say that officials of the Greif firm demanded assurance that if it appeared before the 2 (d) committee, no right of the firm would be waived to challenge the validity of code authority acts, or to challenge the constitutionality of N. I. R. A. Such assurances were stated by the code authority officials to be unnecessary and not within the powers of the code authority to give.

Failing to obtain an adjustment by the member of the code authority certified the noncompliance with article II, section (b) to the compliance council of compliance division, N. R. A., which heard the case in Washington, D. C., July 5, 1934. The member appeared at this hearing by its officers and by counsel. The Industrial Recovery Association of Clothing Manufacturers of which L. Greif & Bro., Inc., is a member, also appeared by counsel and filed an application to be heard. This application was granted and counsel for the Industrial Recovery Association of Clothing Manufacturers participated in the hearing.

Following this hearing the case was heard upon request of the member by the 2 (d) committee of the code authority in Washington, with Deputy Administrator Edwards sitting with the committee.

HEARINGS

The questions raised at both hearings by L. Greif & Bro., Inc., and the Industrial Recovery Association were in substance the same.

Both challenged: The constitutionality of N. I. R. A.; the validity of the Men's Clothing Code; and the legality of the code authority's acts under article II (b).

The association charged: That the code authority is dominated by the Clothing Manufacturers Association of the United States of America and the Amalgamated Clothing Workers of America, and that these two organizations acting by and through the code authority persecuted the members of the Industrial Recovery Association by unfair and discriminatory action under article II (b) to compel their employees to join the Amalgamated Clothing Workers (application of Industrial Recovery Association to appear in the matter of L. Greif & Bro., Inc.).

Greif charged: That the code authority has attempted to enforce the so-called "interpretation of section II (b)," particularly against L. Greif & Bro., Inc., and others member of the Industrial Recovery Association, and the attempts of such enforcement by the said code authority, dominated as it is by the said Clothing Manufacturers Association of the United States of America and the Amalgamated Clothing Workers of America have been discriminatory, oppressive, persecutory, unequal, inequitable, varying, and incalculable. (Transcript, p. 49, hearing July 5, 1934.)

That the code authority's interpretation of article II (b) is "incalculable and unworkable" (Id., p. 50).

In defense to the charge of the code authority that it had violated in article II (b), L. Greif & Bro., Inc., asserted that it had complied with this provision by introducing a bonus system of payment to employees receiving more than the lowest paid "substantial class" and up to $30 per week; and that it paid code minimum wage rates.

The transcript of the hearing consists chiefly of charges and arguments of counsel. Evidence of L. Greif & Bro., Inc., respecting its claim of compliance with article II (b) may be sufficiently stated by abridging the language of Greif's counsel when asked to describe this bonus system:

"Mr. GREEN. None of Greif's officials have explained the bonus system. In a measure it is arbitrary." (Transcript, p. 59, hearing of July 10, 1934.) "The system varies with each individual worker. There is no written statement of it. The bonus depends upon the skill and ability of worker." (Id., p. 104.)

At this point it must be explained that the code authority made and published a written interpretation of article II (b) for the industry as a means or formula for determining the number of the "lowest paid substantial class" and the amount of differential to be maintained and paid workers receiving more than the "lowest paid substantial class" and up to $30 per week. The interpretation fixed 20 percent of the total number of employers as the measure or number to be treated as the "lowest paid substantial class."

6. The words "substantial class" as used in article II, subdivision (b), are to include 20 percent of the total number of employees employed in any establishment.

If, however, there is any individual case in which 20 percent seems inequitable the full facts of such case are to be communicated to the committee provided for in article II, subsection (d), for their further consideration.

Then follows the code authority's explanation or formula for making such computation. It is this interpretation which the association and Greif assert is incalculable and unworkable. Greif states it received this interpretation January 8, 1934 (Id., p. 48).

Mr. Weinberg, of counsel for Greif, stated at the hearing before the National Compliance Board that his client changed entirely from a piecework system to an hourly basis after the adoption of the code (id. p. 88). Concerning the code authority's interpretation and Greif's charge that it is incalculable and unworkable, I find that on November 15, 1933, the Industrial Recovery Association, of which the Greif concern was and is a member, sent out a letter to members explaining the meaning of article II (b) and the code authority's interpretation in the following language:

DEAR MEMBER: It is likely that section II (b) and (c) presented and still does, some problems in its application particularly to pieceworkers.

On September 28, we sent you all of the interpretations received to that date (and, incidentally, to date) from the M. C. C. A., and in paragraph 4 of the said list of interpretations of it was stated that "substantial classes are to include 20 percent of the total number of employees employed in any establishment." While the hand-sewing sections are generally the lowest "substantial classes," the latter being more correctly the operation section. If, from this latter section, a number of workers are selected beginning with the lowest paid, up to and including a number equivalent to 20 percent of the total number of employees working in the entire establishment, and their actual working time earnings prior to July 14, averaged, it will result this amount and the minimum prescribed in the code will equal the differential to apply on the higher paid classes above the minimum, up to $30 per week.

Where piecework rates have been increased to maintain earnings under the code hours in an amount not less than that earned under the longer hours, such earnings should be checked carefully to note whether they exceed the hourly adjustment. Whatever the excess in earnings may be (over and above the hourly adjustment) should be regarded in applying the differential derived from the substantial classes. If the rise in pieceworkers' earnings is above the hourly adjustment and equals the differential in amount, then there is no occasion (in addition to the hourly adjustment), for applying the differential to the pieceworkers' earnings above the minimum.

If the increase in pieceworkers' earnings (above the hourly adjustment) does not equal the differential, then whatever this rise, it should be considered, as stated above, and the net difference between the said amount and the differential applied to the piecework rates in an amount equivalent to the percentage the said net differential bears to the average earnings of the pieceworkers who earn above the minimum.

INDUSTRIAL RECOVERY ASSOCIATION OF CLOTHING MANUFACTURERS

On December 19, 1933, Mr. H. K. Herwitz, controller of the Men's Clothing Code Authority, wrote Mr. Popkin, executive secretary of the Industrial Recovery Association, a letter in which he said:

"I refer to your letter of November 15 which you addressed to your members, copy of which has been sent to me by one of the manufacturers in the Middle West.

"This letter referred to the application of section II (b) and (c) of the code. You are quite right in your letter of September 20 when you stated that the 'substantial classes are to include 20 percent of the total number of employees employed in any establishment'.

"I cannot see by what stretch of imagination the hand-sewing classes would be excluded as not being 'employees employed in any establishment'. There is no warrant for you to take such a position and the information that you sent to your members in that case we would regard as wholly misleading.

"The code authority at its meeting on November 28 adopted a simple formula for the carrying out of the provisions of section II (b). You probably have a copy of this interpretation but in any event I am sending it along to you for your guidance.

"I would be greatly obliged to you if you will be good enough to broadcast the official interpretation of section II (b) as adopted by the code authority to your membership so that there may be no misunderstanding in the matter.

"Yours very truly,

"H. K. HERWITZ.
"MEN'S CLOTHING CODE AUTHORITY."

To the foregoing letter the executive director of the Industrial Recovery Association made answer under date of December 29, 1934, as follows:

"DEAR MR. HERWITZ: With regard to your letter of December 19, which refers to section II (b) of the code, I have taken the time to check a representative member of our members for their understanding of the letter which I sent them under date of November 15.

"None of the firms have construed my letter as you apparently have, to the effect that the 'hand-sewing classes would be excluded as not being employees employed in any establishment'."

From this correspondence, it appears that the Industrial Recovery Administration and the Men's Clothing Code Authority both understood the meaning of article II (b).

On the subject of the accuracy of the code authority's computation of wages due Greif's employees, we have the following record:

"The CHAIRMAN. It is a matter for your interest if you want to present any defense, otherwise we are obliged to take, in the absence of any figures from you, the code authority's figures.

"Mr WEINBERG. The code authority's figure is our figure.

"The CHAIRMAN. If you want to present them.

"Mr. WEINBERG. We have got the figures. We do not deny those figures if they are the figures that they want to use.

"Mr. GREEN. We do not deny any figures that the code authority have. The figures that they got from us." (Id. p. 169.)

Later Mr. Weinberg said:

"That is right, assuming that they are correct as the code authority interprets II (b) and that interpretation is to be applied, and applied as shown on those sheets, we admit that we have not paid those amounts." (Id. p. 177.)

Counsel for Greif further stated in defense that his client's employees were untrained and unskilled. Moreover, that skilled labor was not available in the towns where its plants are operated. These statements are quite inconsistent, however, with the record that the Greif concern has operated for 72 years, in one of the principal needle-trade centers of the United States, where skilled workers are available, many in fact still unemployed. It must be recalled also that the Greif plants abandoned the piecework rates, under which skill and efficiency produce a certain reward, only after the adoption of the code.

The claim of Greif that there is a distinction between its plants and those of its competitors in other parts of the industry in the degree of skill required of its employees, is disposed of by the report of Dr. Lindsay Rogers, deputy administrator, in his report to General Johnson on code hearings.

Dr. Rogers said:

"There is no difference between the kinds of clothing made by the manufacturers in the two associations. From testimony at the hearings it would appear that the Clothing Manufacturers Association represents between 65 and 75 percent of the industry. The testimony, however, failed to dislose any valid ground on which it might be concluded that the minority association represented a subdivision of an industry within the meaning of the National Industrial Recovery Act (sec. 3 (a)).

"Certain possible grounds were suggested by an analysis; all of them disappeared. There is no subdivision on a geographical basis. To be sure, the Clothing Manufacturers Association has its main strength in the four great markets of Chicago, New York, Rochester, and Philadelphia; but its members are in many other markets as well. The Industrial Recovery Association has its main strength outside of the markets mentioned but among its members are to be found manufacturers in Chicago, New York, Rochester, and Philadelphia."

While there is much repetition, the quoted parts of the record are an accurate and fair statement of the defense presented by Greif to the code authority's charge of noncompliance with article II (b), except as to the specific charges of discrimination and persecution made by both the Industrial Recovery Association and Greif against the code authority. On page 19 of its application to appear at the hearing before the Compliance Board, the association stated:

"The applicant alleges on information and belief that Elmer L. Ward is the head of the Goodall Co., with men's clothing factories located at Lorain, Ohio, and at Knoxville, Tenn., and engaged in the clothing industry as defined by the code, and applying to its product the labels of the men's clothing industry. Said company has not been operating on the schedule of hours required by the code, but has been operating on a schedule of 40 hours a week, with the consent or sufferance of the code authority, of which said Ward is a member." (P. 19.)

The foregoing statement is such a meager statement of facts that its effect is to misrepresent by concealment. I find from the records of the code authority and the National Recovery Administration that the Goodall Co. operates plants not only at Knoxville, Tenn., and Lorain, Ohio, but also at Cincinnati, Ohio, and in Sanford, Maine.

Application was made by Mr. Ward's company to the code authority and to the National Recovery Administration for an exemption from the code provision of a 36-hour week and for permission to work a 40-hour week in all its plants. The code authority recommended to the Administrator that this application be denied. Against this recommendation the Administrator granted the exemption as to the company's Knoxville (Tenn.) plant on the ground that its products in this plant were competitive with products of the cotton garment industry working under a

40-hour week provision. The application respecting the company's other three plants was not acted upon by the National Recovery Administration.

The association in its application to appear at the hearing also makes the following charge against the code authority:

"For example, the applicant is informed and believes that an arrangement has been effected between the Amalgamated Union and the manufacturers in the New York market (all being members of the Amalgamated group) by which the employers have computed 5 percent of their labor costs and have applied that sum to the beneficiaries of article II (b) of the code. This was a purely conventional and arbitrary discrimination in favor of the Amalgamated group in New York, and in lieu of or in full satisfaction of the requirements of article II (b), and has been so accepted by the code authority." (P. 20).

Records of the code authority disclose that where 5 percent was insufficient to provide to all the workers who are beneficiaries under 2 (b), the amount necessary to maintain such existing differences was ascertained by the code authority upon its investigation and the firm was directed to make the additional underpayments.

Reference is also made at these hearings to an alleged discrimination in the so-called "Bloch Plant case" in Cleveland. Code authority records show that a II (b) investigation of this plant was reported by the investigator January 19, 1934, who found the wage payments short of the requirements of article II (b). Officers of the plant appeared before officers of the code authority informally on April 30, 1934, and protested the bill rendered, claiming they should have an allowance for lost time. They were billed for the amount of unpaid wages without deduction. The plant officials have formally appealed to and twice have appeared before the 2 (d) committee, the last time on July 9, 1934. At the conclusion of this hearing the 2 (d) committee required further data and proof in support of the plant officials' claim. The last data sent in by plant officials was received by the code authority on August 4, 1934. The deficiency for which the plant was billed was $37,654.04, and the appeal is still pending.

Whether the code authority's procedure has been partial or impartial in the investigation of complaints against Industry members may possibly be best answered by a brief review of the conditions and responsibilities confronting it, as revealed by its files and records.

By March 1934 it had 1,909 manufacturing plants and shops, employing 126,310 employees reporting to it. By July 31, 1934, it had received 539 complaints against industry members of code wage violations. On April 8, 1934, it had completed and had reports on article II (b) investigations of pay rolls in 144 plants in Chicago, Milwaukee, Cleveland, Cincinnati, Boston, Rochester, New York City, and Philadelphia, all previous to the report of investigations of the Greif plants. By July 31, 1934, the code authority had reports on 370 plant investigations. These investigations proceeded by areas or markets, of both union and nonunion plants. Parenthetically, it should be explained that in some instances several complaints were made against one plant. The investigation included the entire pay-roll records of employees in the plants investigated.

It so happened that the first report, on January 3, 1934, was on a plant in Milwaukee under union contract with the Amalgamated Clothing Workers. The deficiency in wages found due was paid. It is also interesting to note in passing that on July 19, 1934, the 2 (d) committee heard two appeals from bills for deficiencies in wage payments. One was that of a nonunion plant in St. Louis, a member of the Industrial Recovery Association and the other a Philadelphia plant under union contract with the Amalgamated Clothing Workers.

When one or more investigators entered an area or market the code authority records show in every instance the investigation of both union and nonunion plants where there were both classes.

But one conclusion can be drawn from the records, files, data, information, and hearing transcripts examined. There was no discrimination against the Greif concern. There was no persecution of Greif or other members of the Industrial Recovery Association. Union and nonunion plants are investigated without discrimination. They were all billed for wage deficiencies found due to employees on the same basis of interpretation of article II (b) and upon the same basis of computing pay-roll data.

After the approval of the code the Greif concern entirely abandoned the piecework system of pay for the hourly system, thus penalizing the skill and efficiency of the higher paid classes of employees. A bonus system was applied in lieu of the minima and differentials fixed by code article II (b). These changes were made in the wage systems without submitting them to the code authority or to the Administrator. The change operated to defeat the minima and differentials

established by article II (b). The code authority found the deficiency due employees during the period November 20, 1933, to February 17, 1934, to be $35,785.91.

The Compliance Board found that the Greif concern had violated article II (b) and directed the code authority to withhold labels until Greif should comply with the code authority demands and code provisions.

No other action upon the record of evidence was possible. Greif offered no evidence worthy of being called a defense, nor of intention to comply with the code.

CODE AUTHORITY ADMINISTRATION

This investigation would be incomplete if it did not include the charges by the Industrial Recovery Association and Greif that the code authority is unfairly dominated by the Clothing Manufacturers Association of the United States and the Amalgamated Clothing Workers. These charges go back to the original N. R. A. code hearings in August 1933, and the proposal and approval of the code for the men's clothing industry.

If it was the intention of Greif and the association to defeat the purposes of the law, then the noncompliance with article II (b) is explained. Whether such was the intention of Greif and the association becomes for such purpose at least, a material inquiry. If the inquiry reveals in the facts and circumstances surrounding the acts of Greif and the association, whether acting jointly or separately, on intent to defeat the law and the provisions of the code, then such facts, acts, and circumstances are both material and competent in determining the weight and credibility of all evidence and testimony offered by Greif in defense of the code authority charge of noncompliance.

Two proposed codes were presented to the Administrator, one by the Clothing Manufacturers Association of the United States. This code included without change those parts of N. I. R. A. on conditions of employment required by the act. The Industrial Recovery Association of Clothing Manufacturers, representing a minority in the industry, including Greif, presented the other, which contained a provision which would have nullified, if adopted, section 7–A. On this subject, Deputy Administrator Rogers reported to General Johnson as follows:

"A fundamental difference in the points of view of the two associations appeared in respect of section VII (a). The code submitted by the Clothing Manufacturers Association did no more than quote the mandatory provisions of the National Industrial Recovery Act. On the other hand, the Industrial Recovery Association proposed the addition to section VII (a) of the following language: 'Employees not members of a labor union shall be free from interference, restraint, or coercion by any labor union, its members or agents. Employers and employees may bargain individually or collectively as may be mutually satisfactory to them.' The fact that this code sought in effect to interpret and possibly amend an act of Congress discloses the principal reason why two codes were presented by the two associations in the men's clothing industry. One association—the Clothing Manufacturers Association—is composed largely of union manufacturers."

The deputy administrator further reported:

"Under its bylaws, moreover, the Industrial Recovery Association refused admission to manufacturers who had collective agreements with the Amalgamated Clothing Workers of America."

From the foregoing report it appears that members of the industry who were operating under collective agreements authorized by section VII (a) were debarred from membership. Whether this standing alone would be sufficient proof of an intent to defeat the law at a later date might be questioned, if it were not followed by subsequent acts designed to put such intention into effect. When, however, we find one of the association's members after the adoption of the code, ignoring the wage provisions of the code as finally adopted, and substituting wage provisions of its own making, without submitting them to the code authority or the Administration for approval, such intent to defeat the law is quite conclusive. Such proof does not consist of isolated or intermittent acts of noncompliance but consists in a consistent course of noncompliance in the failure to pay code wage rates during any of the period investigated. The relationship between the original intent as manifested and the subsequent acts of code violation is one of unbroken continuity.

It becomes equally material to know what is the actual effect of such noncompliance when contrasted with the compliance of Greif's competitors. To show such effect I requested the code authority to take from its records of analyses of pay rolls, representative manufacturing plants in widely separated markets and

show in percentages the wage earnings of groups under code compliance conditions and the actual earnings of employees under noncompliance conditions in the Greif plants. These representative plants include three union and four nonunion plants:

A Cleveland plant for the week ending March 10, 1934, with 1,389 employees had 56.5 percent who were earning more than 50 cents per hour; 39 percent who were earning more than 75 cents per hour and less than 1 percent earning only the code minimum of 40 cents per hour. It will be noted that 95.5 percent earn more than 50 cents per hour.

The Greif plants during the same period had no single employee earning 75 cents and over per hour; only 7 percent earning 50 cents per hour and over, and only 14 percent earning 45 cents and less than 50 cents per hour, but Greif had 79 percent of 1,215 employees earning less than 45 cents per hour; 20 percent earning only the minimum and 1 percent below the minimum.

A Chicago plant with 1,312 employees had 88 percent earning over 50 cents per hour and 55 percent earning over 75 cents per hour. This house had but 1 percent earning only the minimum of 40 cents per hour.

In Boston a plant with 697 employees had 71 percent earning over 50 cents per hour; 39 percent earning more than 75 cents and only 2 percent earning only the minimum of 40 cents.

A plant in Rochester, 852 employees, had 70 percent earning over 50 cents per hour; 25 percent earning more than 75 cents per hour; and only 6½ percent earning the minimum of 40 cents.

We come now to a St. Louis plant, a member of the National Industrial Recovery Association, having only 37 percent earning more than 50 cents per hour; only 5 percent earning 75 cents per hour or over; and 26.4 percent earning only the minimum.

Coming to a Baltimore member of the Industrial Recovery Association, we find 54 percent earning only the minimum of 40 cents per hour; only 16 percent earning 50 cents per hour and over; and only one-half of 1 percent earning 75 cents and over. (Cutters and off pressers were excluded from the tabulations intended to be covered by these computations.)

It is entirely proper in concluding this review of facts, to note that the Industrial Recovery Association made application to appear at the hearings in the character of "amicus curiae and other relief." And the fact must also be noted that all its acts and arguments were, so the record shows, as a friend of and in behalf of its member, L. Greif & Bro., Inc. Nor is it inappropriate to suggest, what is manifest in the record, that its name is designed to conceal rather than to reveal its purpose to the public, which has had no opportunity to read the record.

FINDINGS

1. Article II (b) of the code is both understandable and practicable. The code authority's interpretation is understood by the industry, by the Industrial Recovery Association and by L. Greif & Bro., Inc. It is accepted by the industry. The interpretation adopts 20 percent as the nearest percentage figure of the total number of employees in a plant who are found in the "lowest-paid substantial class". If analysis of pay-roll data shows a different percentage, that fact is open to proof upon appeal to the 2 (d) committee of the code authority.

2. The Greif management did not inform the code authority or the Administrator that it did not understand article II (b) or the code authority's interpretation.

3. The officials of the Greif firm abandoned the piecework rates and substituted hourly rates and a bonus system without notice to or approval by the code authority or the Administrator for the purpose of evading and defeating the wage provisions of the code.

4. The effect of its action deprived its employees of the wage rates and earnings due to them under the code.

5. The investigation of the pay rolls of the Greif plants by the code authority was made in the due and regular course of its procedure, upon a vast number of wage complaints which could not all be investigated simultaneously, and only after it had investigated a large number of other plants in other sections of the industry.

6. In the course of its investigations both union and nonunion plants were investigated and billed for wage deficiencies without discrimination or favoritism.

7. The noncompliance of the Greif plants with the wage provisions of the code gives that firm a grossly unfair competitive advantage in low labor costs over its competitors.

8. The influence of the Clothing Manufacturers Association and the Amalgamated Clothing Workers in the administration of the code authority is economically and socially constructive and stabilizing, and designed to effectuate the purposes and provisions of the code.

9. The specific charges of discrimination and favoritism made by the Industrial Recovery Association against the code authority, the Clothing Manufacturers Association, and the Amalgamated Clothing Workers, were untrue in each instance and no proof was offered at the hearings to support them.

10. The charges, acts, influence, and policy of the Industrial Recovery Association and of L. Greif & Bros., Inc., are obstructive and destructive. If successful, they would tend to defeat the objects of the law and the administration of the code by breaking down code wage and working standards and establishing unfair competition in the men's clothing industry. Their attack upon the validity of the code and the constitutionality of the National Industrial Recovery Act, tested by the evidence taken at the hearings, appears to be but a mask to cover violations of code-wage provisions and fair competition.

N. R. A. labels should be withheld, as ordered by the Compliance Board, until compliance is enforced.

In the procedure of the code authority I found but one thing to criticize. It is in the notice which, in the course of an investigation, it "directs" persons to appear before the investigator. This in no way affects the facts I have investigated and reviewed. The code authority nevertheless does not possess authority to direct persons to appear before it, or to testify, or produce evidence otherwise than as provided in the code. The practice should be discontinued.

M. D. VINCENT,
Assistant Deputy Administrator Apparel Section

(Scope of data furnished Industrial Recovery Association.)

Mr. Curlee raises the following objections with respect to this data:

I. That it is not representative as to—

(*a*) Number of employees. (See pp. 1029 and 1051.)

(*b*) Period covered. (See pp. 1030 and 1051.)

(*a*) Number of workers covered. (See statement "Material from the U. S. Bureau of Labor Statistics", stating that the tabulation included all establishments in the industry; also table I.): In addition, a tabulation was made of 1,471 establishments, employing 99,000 workers. (See table 2.) This tabulation included all establishments sending in summary sheets, including all the larger units, 650 smaller manufacturers, and over 750 contractors. The average for the 99,000 workers was 66.2 cents per hour and the average for all workers in the industry was 66.1 cents per hour.

There was no principle of selection used other than the availability of records. The real test of the true representative character of the material submitted is that a comparison of the grand average wage per hour for the 99,000 workers and the grand average wage per hour for all the workers in the industry shows a difference of only 1 cent per hour (66.2 cents versus 66.1 cents per hour).

(*b*) Period covered: As to the representative character of the period covered, there was also no principle of selection used other than the availability of data. Summary sheets for average wages, man-hours, etc., were not available for the period before July 1, 1934. Further commentary on the period selected may be found in the fact that the record of suits cut as shown on table 35 indicates that substantially the same proportion was cut in the various markets prior to July as subsequent to July.

II. Mr. Curlee complains that he was not given data on the relative production in the four principal markets and the rest of the country. (See p. 1035.)

Tables 34 and 35 show this information very clearly.

III. Mr. Curlee complains that he was not given data on the average wages paid per hour in the various markets of the industry.

This information was supplied to Mr. Curlee by the Bureau of Labor Statistics on or about January 17, 1934, and shows classification of man-hours, number of establishments, number of employees and total pay rolls, classified as follows:

By each individual city over 100,000 population.
By cities with a population of from 50,000 to 100,000.
By cities with a population of from 25,000, to 50,000.
By cities with a population of from 10,000 to 25,000.
By cities with a population of from 5,000 to 10,000.
By cities with a population of from 2,500 to 5,000.
By cities with a population of less than 2,500.

All cities with a population of 100,000 or over were indentified individually by name. (See table I.)

IV. Mr. Curlee complains that he was not given data—

(*a*) On the relative continuity of production in the hinterland and in the great markets. (See p. 1052.)

(*b*) On the comparative annual earnings in the hinterland and in the great markets.

(*a*) This material was supplied in tables nos. 30 and 31. (1) These tables are based on the experience of the 5 months July to November. (2) This period included both slack and busy season. (3) Production in the 5 months taken would for the various markets show the same proportions in the fall season of 1934 as in the spring season of 1934. (4) The same relationship is true both in the large and in the small establishments.

It is quite obvious in looking at the figures that in 5 months a worker who received 70 cents and over per hour and who was supplied an average of 25.24 hours work per week in the fall season would earn at this annual rate $1,054; whereas a worker who received between 40 cents and 49 cents per hour and who was supplied with 23.87 hours per week during the fall season would have earned on that basis for the year $581.

Since it is true that the distribution of volume in the industry as between the markets was substantially the same in the spring season as in the 5 months' period covered in these tables, the annual earnings would be at the rates indicated.

Mr. Curlee has laid such great stress throughout the various days of testimony and in his various briefs before the Administration and in public utterances in the press, upon the claim that the members of his association give greater continuity of employment and therefore have higher average annual earnings than the members of the industry in the larger markets, that it is thought desirable at this point to focus sharply the attention of this committee upon the outstanding indications of these tables.

The low wage areas do not give greater total hours of work per year per worker regardless of the distribution of those hours, and the average annual earnings are lowest in these areas. In other words, annual earnings vary directly as hourly earnings and in almost exact proportion. (See table 30–31.)

V. Incidentally, Mr. Curlee (see p. 1058) quotes from Dr. Lindsay Rogers' report at the time of the approval of the code: "'The men's clothing industry * * * employing 150,000 workers * * *.' Mr. Herwitz testified at the February 1 hearing that there are now 125,000 workers attached to the clothing industry. If both of those figures are correct, it means a decrease of 25,000 in the number of workers since the code was approved."

The figure, 150,000, quoted by Dr. Lindsay Rogers as the number of employees in the clothing industry did not refer to the industry as of 1933, but to those who were employed in the industry in 1929. The actual number of those employed in the industry immediately precode was approximately 110,000. In other words, there has been an increase in employment in this industry and not a decrease.

INDUSTRIAL RECOVERY ASSOCIATION FIRMS HAVE LOW AVERAGE WAGES

Table 15, "Average hourly rates paid to manufacturing employees", 50 largest establishments, shows:

(1) The 10 firms paying the lowest average hourly wages ranging from 42.4 cents per hour to 49.7 cents per hour, or approximately 45 cents per hour, are all members of the Industrial Recovery Association.

(2) From the same table, the 10 firms paying the highest average hourly earnings, ranging from 74.3 cents per hour to 86.5 cents per hour, with an average of 79 cents per hour, are all members of the U. S. A. Association with one exception, which excepted firm is an independent, nonunion firm and a member of neither association.

STATISTICS SUPPLIED TO THE INDUSTRIAL RECOVERY ASSOCIATION BY THE RESEARCH AND PLANNING DIVISION OF N. R. A., THE BUREAU OF CENSUS, AND THE BUREAU OF LABOR STATISTICS, FROM THE RECORDS OF THE MEN'S CLOTHING CODE AUTHORITY

This material was supplied in installments, as compiled, beginning January 17, 1935, and continuing through January 29, 1935. All this material was finally summarized in a bound report, which report was dated January 29, 1935, and which was presented to the committee on Monday.

Frequency table showing distribution of 1,471 establishments (employing 99, 107 workers).

Hourly earnings by average for establishment, classified in 5 cent intervals, beginning at 40 cents per hour up to 75 cents and above, for both manufacturers and contractors, separately and combined.

Frequency table showing distribution by market areas according to average hourly wage paid to all employees.

Hourly earnings by average for market area, classified in 5-cent intervals, beginning at 40 cents per hour up to 75 cents and above, for both manufacturers and contractors, separately and combined.

Percentage of garments cut, suits wholly or partly of wool, 44-week period beginning January 1, 1934, to week ending November 3, 1934, inclusive.

(For nine principal markets and for elsewhere, also showing total suits wholly or partly of wool cut.)

The next five tables classify hourly wages paid to manufacturing employees (exclusive of cutters and off-pressers) by 5-cent intervals, beginning at 40 cents, up to 75 cents, and above. They also show the number of workers in each establishment listed who receive exactly the 40-cent minimum. These tables classify hourly earnings for individual workers and by establishments which employ approximately 57,000 workers.

Frequency table showing percentage of manufacturing employees in coat and vest shops, exclusive of off-pressers and cutters, receiving classified rates of pay, 50 largest manufacturers.

Frequency table showing percentage of manufacturing employees in coat and vest shops, exclusive of off-pressers and cutters, receiving classified rates of pay, manufacturers employing from 70 to 165 workers.

Frequency table showing percentage of manufacturing employees in coat and vest shops, exclusive of off-pressers and cutters, receiving classified rates of pay, 50 largest contractors.

Frequency table showing percentage of manufacturing employees in pants shops only, exclusive of off-pressers and cutters, receiving classified rates of pay, manufacturers employing from 70 to 165 workers.

The number of men's and boys' garments cut is, for all practical purposes, indicative of the number of labels sold to manufacturers located in these nine principal markets. This data was readily available, and, in the opinion of the Research and Planning Division, is an adequate index of the label sales in these nine principal markets. Together with the tabulation of the label sales outside of the nine principal markets they give a complete index of label sales by localities.

Summary of men's and boys' clothing cut by 4-week periods; designated as table I.

Summary of men's and boys' clothing cut by principal markets; designated as table II.

Label sales (except nine principal markets included in production report) 1934.

Number and percent of employees classified by manufacturing employees and the percentage of nonmanufacturing employees. This information was tabulated not only for large manufacturers, but also for small manufacturers.

Number and percent of manufacturing employees (excluding off-pressers and cutters) classified by coats, vests, pants, and cutting shops, 50 largest establishments.

This table shows the percentage of workers employed in the coat shops, in the pants shops, in the vest shops, and in the cutting rooms. The table shows that approximately 65 percent of the workers are in the coat shops, 8 percent in the vest shops, 16.5 percent in the pants shops, and 9.7 percent in the cutting shops.

Estimated percent of manufacturing employees classified by type of operation and by minimum applicable, management amendment proposal.

This table shows the percentage of workers in the coat and vest shops to which the 40-cent minimum would be applicable; the 50-cent minimum and the 65-cent minimum would be applicable if the amendment proposal by the management members of the code authority were adopted.

Number of contracting firms in New York City and Brooklyn, N. Y.

Number of contracting firms investigated and reported upon.

MATERIAL FROM THE UNITED STATES BUREAU OF LABOR STATISTICS

These tabulations show the total man-hours worked per week, number of establishments, number of employees, total pay roll, for identical establishments reporting for the week nearest the 15th of each month, beginning with July 15, to November 15. The material was classified by each individual city over

100,000, for cities with a population of from 50,000 to 100,000, 25,000 to 50,000, 10,000 to 25,000, 5,000 to 10,000, 2,500 to 5,000, and less than 2,500.

These tabulations cover all pay-roll reports sent to the United States Bureau of Labor Statistics for tabulation, and cover practically all establishments in the industry, all establishments reporting.

RESEARCH AND PLANNING REPORT ON GREIF CASE, NATIONAL RECOVERY ADMINISTRATION

MARCH 8, 1935.

To: Mr. Leon Henderson, Director Research and Planning Division.
From: H. F. Taggart.
Subject: The Greif case.

This is a résumé of the activities of the Research and Planning Division, with the technical assistance of their Deputy Administrator Greenberg, in the Greif case.

About August 1, 1934, Greif had been found in violation of section II (b) of the Men's Clothing Code by the code authority, and the Compliance Division had upheld the findings. Greif had also gone into the Federal court in Baltimore and obtained a temporary injunction, seeking thereby to retain the "blue eagle" and their stock of labels. Hearing on a permanent injunction was pending. In order to avoid further litigation, the suggestion was made by yourself to see (1) whether the code authority's application of II (b) had been properly made and (2) whether there were any circumstances which should modify the application. Greif claimed (1) that the interpretation and application of II (b) were both discriminatory and illogical and (2) that their operating costs and conditions were such that the application proposed was unfair.

The commission was undertaken as a purely fact-finding job. The Greif records were made available, and we determined their costs with what seemed to be substantial exactness. We obtained competitive garments and figures indicating their costs also. Our findings were (1) that Greif had not complied with section II (b); and (2) that their costs, while substantially higher than they were precode, were nevertheless decidedly lower than those of their nearest competitors. They should, therefore, be expected to make a real effort to comply with section II (b), a thing which they had not previously done at all.

These findings were made sometime in the latter part of August. When they were reported to Greif and the attorneys for both sides, Greif seemed willing to accept them and to take some action to comply. They were unwilling, however, to accede to the award and the procedure of the code authority. The code authority, in turn, would be willing to accept some compromise if the principle of section II (b) were upheld. Naturally we were asked to suggest the remedy. Thus you were put in the position of mediator or arbitrator, and the second phase of our connection with the case began.

Our proposal consisted of three parts: (1) That Greif abandon its timework and bonus system of pay and adopt a piecework system, (2) that the piecework costs of Greif's basic garments be set at a figure which would be more nearly in line with their competitors, and (3) that pay restoration to employees be on the basis of a recomputation of their wages on the new piece rates rather than by the scheme proposed by the code authority. These suggestions were accepted in principle, but the manner of setting the piece rates, the level of basic costs, and the degree of pay restoration had to be settled by negotiation.

Agreements on the points were arrived at as follows: (1) Piece rates were to be established by joint efforts of Greif and ourselves, we making the original proposals and having the final say; (2) basic costs were to be approximately 7 percent higher than the post-code costs as determined by our findings; (3) pay recomputation was to date back to approximately June 9, 1934.

These matters were settled on August 31, 1934. In about a week we made our first proposals of piece rates, but it was not until October 15 that final agreement was reached as to the rates for the eight plants included in the code authority's original bill. Rates for the other two plants were set even later. As the rates were set computations were made of the earnings which all employees would have made since June 9, if the piece rates had been in effect as of that date. These computations were audited by Messrs. Chavin and Ollis. From the earnings which would have been made were deducted the wages actually paid in each case. Any excess of the computed wage over the actual wage was to be paid to the employee in question. The total amount of such payments was $24,699.41.

The payment of the individual amounts was audited by Mr. Ollis, this part of the work being completed on December 13, 1934. His report indicates that he examined receipts from all but three of the employees entitled to share in the distribution. Of these 3, 1 had died and 2 could not be located.

Full records of the case are in possession of the cost-accounting unit or are in your files. The code authority has been furnished with the piece rates and the names of the operations. Greif gave us complete specifications for each operation as well, but these specifications were not, by agreement with Greif, transmitted to the code authority.

Neither has the code authority been furnished any cost information, except the basic costs decided upon in the agreement of August 31, 1934, and the same basic costs as worked out in piece rates. Neither names of recipients nor amounts of pay adjustments have been disclosed to the code authority.

We are informed by Greif's representatives that the new piece-rate system is working satisfactorily at the present time, with minor exceptions. Apparently a very few of the hundreds of individual rates set are not quite what we hoped for, but the company has made no application to change them. The Compliance Division received one complaint from a Greif employee who evidently did not understand why some employees received a substantial pay adjustment while others got nothing. This employee also complained that the company was driving those who were unable to earn the minimum under the piece rates. This is probable. However, from all information in our posession, we have no reason to believe that the settlement has not worked out substantially as expected.

H. F. TAGGART.

ORGANIZATION, CHARACTER, AND METHOD OF SELECTION OF CODE AUTHORITY

(Discussion of constitution of code authority. See p. 1062 of the record)

Senator Clark, on page 1065, asks the following question: "Was there any suggestion ever made to your association to pick out five men to go on the code authority?" Mr. Curlee, "No, sir."

At this point I wish to file for the record a letter dated August 18, 1933, on the letterhead of the U. S. A. Association, sent by Mr. Mark W. Cresap, president of the association, to all the members of the Industrial Recovery Association, at that time 111 firms. This letter was a request to members of the Industrial Recovery Association to nominate men to represent them on the code authority.

Mr. Cresap was amazed to receive the few responses that were made. The following responded and made the following nominations:

The Block Co., Cleveland, nominated Paul Feiss of Cleveland.

Kling Bros., Chicago, nominated Briedy & Rogovsky, of St. Louis, Davis of Cincinnati, and Leopold Kling, of Chicago.

Kornman, Nashville, nominated R. A. Sewell, of Bremen, Ga., and H. B. Moore, of the Hardwick Woolen Mills, Cleveland, Tenn.

Keller, Heuman & Thompson, Rochester, nominated Hart, Schaffner & Marx, B. Kuppenheimer, L. Greif & Bro., Inc., Fashion Park, Michael Stern, Cohen-Goldman, Curlee Clothing Co.

Marx & Haas-Korrect Co., St. Louis, nominated S. H. Curlee of St. Louis.

Michael Stern, Rochester, nominated Keller, Heuman & Thompson Co., and themselves.

Epstein Pants Co., St. Louis, nominated S. H. Curlee of St. Louis.

H. B. Rosenthal-Ettlinger Co., Poughkeepsie, N. Y., nominated Paul Feiss, of Cleveland.

Epstein, Frank & Lochner, of Buffalo, nominated Messrs. Hirsch, Heller and M. Wile & Co., of Buffalo.

Mr. Cresap then did the next best thing. He invited the persons who were most representative of that association in the judgment of the membership of that association, namely, those whom this membership had chosen to be their officers. An examination of the letterhead of the Industrial Recovery Association discloses that these officers were as follows:

S. H. Curlee, president; Leonard L. Greif, Sol Heuman, J. L. Myers, of Michael Stern, vice presidents; T. M. Ramseur, of Schoeneman, secretary; Eugene Saenger, treasurer.

From these officers Mr. Cresap, president of the U. S. A. Association, Mr. George L. Bell, the then executive director of the U. S. A. Association, Mr. Victor Reisenfeld, vice president of the U. S. A. Association, and Mr. Lewman,

of Richman Bros., personally called upon and extended invitations to join the code authority to the following:

S. H. Curlee; L. L. Greif; Sol Heuman; Mr. Schoeneman; George Henry, of Seinsheimer.

The reason for selecting Mr. Henry and eliminating Michael Stern was the fact that Heuman and Michael Stern were both in Rochester, and the important area of Cincinnati would thereby not be represented. The invitation being accepted by Mr. Heuman, he invited Mr. Henry. Messrs. Heuman and Henry accepted the invitation, joined the code authority, and are members of the code authority to date. The other three men, Messrs. Curlee, Greif, and Schoeneman, refused the invitation.

On page 1066 of the record, Mr. Curlee stated that Elmer Ward is a resident of New York City. Mr. Elmer Ward is the president of the Goodall Co., with plants now operating in Sanford, Maine; Knoxville, Tenn., Lorain and Cincinnati, Ohio. At the time Mr. Ward was appointed member of the code authority, the Goodall Co. operated in Knoxville, Tenn., and Sanford, Maine, but at no time did the Goodall Co. operate manufacturing plants in New York City.

On September 8, 1933, at the request of Mr. Martin E. Popkin, who is executive director of the Industrial Recovery Association, the chairman of the code authority invited Mr. Popkin to attend code authority meetings. Mr. Popkin never responded to the invitation and never attended any code authority meetings.

On May 26, 1933, a letter was mailed to every known clothing manufacturer in the country. I submit for the record a photostatic copy of this letter, which was printed in the Daily News Record on May 26, in addition to having been mailed to individual members of the industry. You will observe that the 33 members of the industry who appeared at the meeting on May 21, 1933, in Washington, to found the U. S. A. Association did not appear in their individual capacities, but as representatives of trade associations, contractors' associations, and markets, and that, taken together, these 33 people represented an overwhelming majority of the members of the men's clothing industry.

[Letter to Senator Nye]

MARCH 19, 1935.

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.

DEAR SENATOR NYE: During the conference between yourself and Mr. Harriman and Dr. Peck and myself yesterday, you requested a brief statement of any benefits which the men's clothing industry has derived from that industry's code and the administration of it.

The results of code administration can be best pictured by a brief survey of the industry's situation immediately previous to the approval of the code.

By the first half of 1933 employment and production had reached a low ebb. Wages were low. In some sections of the industry, weekly wages were as low as $4, $5, and $6, although in the unionized areas earnings were substantially higher. The average weekly earnings in the men's clothing industries in June 1933 was $12.72.

In addition to the diminishing employment, low wages and production trends, the industry had suffered for a long period from home work, as all needle industries had. This industry had a large group of home workers. This home work was characterized by the lowest wage standards and by indescribably debased working and living conditions.

In common with other industries, the men's clothing industry suffered from a demoralized market. Many members of the industry were operating at a loss and the industry mortality was high.

Upon approval of the code, home work was abolished and workers who had previously been engaged in home work began to find employment in shops and factories at greatly increased wage rates and total earnings. The code minimum wage rate of 40 cents per hour, and $14.40 per week, was much higher than average earnings in 1933 and substantially increased the earnings of all workers.

The adverse trends above mentioned have been reversed. The standard work week of 36 hours has resulted in a spread of employment. (Previously, the work-week in unionized areas was 44 hours, and in many of the nonunion shops the work week was much longer.) Employment has increased from a peak of 109,000 workers in March 1933 to 140,000 in March 1934. The average earnings of workers in this industry during the last half of 1934 was 66.8 cents per hour.

With the general increase in demand for consumers' goods, a substantial improvement in men's clothings markets has occurred. During the present season

production has again become a problem, and the National Recovery Administration, on March 12, 1935, upon the application of the code authority, granted an additional 4 hours per week working time for a period of 5 weeks to meet the market demand for production. The surplus of skilled labor has been absorbed in many market areas.

Incidentally it is interesting to note that industrial mortality has rapidly declined. The mortality of 211 firms in 1934 contrasts with 298 firms in 1933. Seventy-five percent of the mortality during the 18 months of code administration occurred in New York and Baltimore suffered a mortality of only 10 concerns during the same 18 months' period. Price increases have been moderate and current season prices show a slight downward tendency. Better business is reflected in a notable increase in confidence among industry members.

It is accurate to say that the code administration period has witnessed a substantial degree of stabilization in regularity of employment, increased wage rates, and earnings and in production. Much of this is attributable to the uniform hours and standardized minimum classified wage rates prevailing under the code. These factors and the elimination of home work and sweatshop conditions are obviously responsible for the stabilizing trends I have very briefly pictured.

Naturally this has not been accomplished without encountering serious administrative problems. Code authorities were entirely without experience in the functions of code administration. The National Recovery Administration itself was likewise without such experience. This industry, however, has fortunately had a high degree of cooperation between management and labor and between the code authority, industry members, and the National Recovery Administration. Mistakes have occurred. They have been remedied as rapidly as time and experience pointed them out. On the whole I feel justified in saying that the code authority and a large majority of the industry have approached their industry problems and responsibilities with vision and practical good sense.

With best wishes,

Yours very truly,

M. D. VINCENT, *Deputy Administrator.*

OPERATING AGREEMENT

The Clothing Manufacturers Association of the United States of America, an association organized not for pecuniary profit, hereinafter called the "association", and the undersigned clothing manufacturer hereinafter called the "member" agree, and the members agree with one another.

Whereas a national emergency exists productive of widespread unemployment and disorganization and demoralization of industry, affecting the public welfare and undermining the standards of living of the American people and causing widespread and burdensome losses to manufacturers of clothing not only because of the depression but also because of sweatshop and unfair competition; and

Whereas the lowering of wages in the clothing industry as well as in other industries, and the unemployment of millions have greatly reduced the consuming power of the public, and it has become manifest that unless some measure of control is exercised, not only will the economic condition of industry and labor suffer, but incalculable harm may be caused to social conditions; and

Whereas the President has requested the Congress to provide the machinery necessary to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week and to prevent unfair competition and other disastrous effects; and

Whereas there is now a bill pending before the Congress known as the "National Industrial Recovery bill" designed to promote the organization of industry for the purpose of cooperative action among trade groups to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to reduce and relieve unemployment and to rehabilitate industry.

Now, therefore, it is agreed:

I. That the members have formed this association for the express purposes of rehabilitating, stabilizing, and improving conditions in the men's, boys', and children's clothing industry, in the interest of every clothing manufacturer in the industry, their employees and the public through this and similar undertakings by other clothing manufacturers, to the end that united action of management and labor be fostered and maintained under adequate Government sanction and supervision and reduce and relieve unemployment in the clothing industry and improve standards of labor.

II. The association shall take such steps as it may consider advisable to analyze the problems of the industry generally and enter into binding agreements with employees or workers and others pertaining or relating to—

(a) Appropriate agreements with labor establishing maximum wage schedules which shall prevail throughout the clothing industry.

(b) Appropriate agreements with labor establishing minimum wage schedules which shall prevail throughout the clothing industry.

(c) Legislation, Federal, State, and local.

(d) All other things and acts necessary or expedient to conform with and properly carry out the provisions of the National Industrial Recovery Act when in force and with the spirit thereof, to the end that the unemployed may secure employment and the business of the clothing manufacturer rehabilitated.

III. Any person, firm or corporation engaged in the clothing industry is eligible to become a member of the association provided he agrees to subscribe to the practices and policies adopted and which shall from time to time be adopted by the association and the provisions contained in this agreement, insofar as they are applicable to the member.

IV. The association, in the absolute discretion of the board of directors, may prepare standard terms or agreements to be utilized and put into practice by every member, to cover maximum hours of work for each day and the number of work days each week, and the minimum rates of pay, and such other working conditions as may be desirable to obtain the benefits of the Industrial Recovery Act for the clothing industry. The members agree to accept and execute such agreements, as individual contracts; or, in the discretion of the association, to be bound by a general agreement of the association, and such agreements shall be binding upon all of its members as effectively as if each had executed the collective agreement for himself. The member authorizes the association in the absolute discretion of its board of directors to prepare standard codes of practice which shall have the approval of the President of the United States or his properly designated representative or subordinate, to be put into practice by every member of the association and to be a standard for every member of the industry, and designed for the protection of the consumers, competitors, employees and others in furtherance of the public interest.

V. The association in the absolute discretion of the board of directors may set up a bureau of adjustment to settle all matters involving codes of ethics and proper trade practices; and in addition to the provisions for enforcement set forth in the National Industrial Recovery Act, the bureau shall work out methods for controlling such codes and practices and may establish appropriate rules in reference thereto.

VI. The association, in the absolute discretion of the board of directors, may set up headquarters and engage personnel for the purpose of handling any or all of the foregoing purposes and problems. For such purposes the member agrees to pay to this association dues fixed from time to time by the board of directors. The association shall utilize the funds paid over to it in its absolute discretion for any of the association's purposes.

VII. In the event that any clause, paragraph, or section of this agreement, or any part thereof, shall be found or held to be illegal or inoperative, such fact shall not affect the validity or legality of any other part or provision of this agreement, nor shall it affect the intent of the parties, which shall be carried out as far as may legally and validly be done.

VIII. If this agreement is signed by the member of a copartnership, it shall apply to them and each of them individually in the event of the dissolution or termination of the said copartnership; and any obligation hereunder shall be binding upon the successor of the subscriber, by merger or otherwise, and upon his personal representative.

IX. It is expressly agreed that this instrument is one of a series substantially identical in terms. All such instruments shall be deemed one contract for the purpose of binding the subscriber, to the same extent as if all of these scribers had signed a single contract.

X. The parties agree that there are no oral or other conditions, promises, covenants, representations, or inducements in addition to or at variance with any terms hereof; and that this agreement represents the voluntary and clear understanding of both parties fully and completely.

XI. This agreement shall exist for a period of 2 years from the date hereof. In the event the Industrial Recovery Act is further extended, then this agreement shall be extended for such additional period. In the event the President shall by proclamation declare that the emergency recognized by section I of the

Industrial Recovery Act shall no longer exist, this contract shall become null and void.

Read, considered, and signed as of ——, 1933, at Washington, D. C.

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By----------

ASSOCIATION

By----------

The CHAIRMAN. Mr. Blaisdell is the next witness.

STATEMENT OF THOMAS C. BLAISDELL, JR., DIRECTOR, CONSUMERS' DIVISION, NATIONAL EMERGENCY COUNCIL

(The witness was duly sworn by the chairman and testified as follows:)

The CHAIRMAN. What position do you occupy, and what relationship have you had with this code administration?

Mr. BLAISDELL. Senator, at the present moment I am not connected with N. R. A. in an official capacity. I am a member of the Consumers' Advisory Board, one of the three advisory boards. My present position is that of Director of the Consumers Division of the National Emergency Council, which position I have held since February 1.

My relationship with N. R. A. was since last September until February 1, during which period I was the executive director of the Consumers' Advisory Board.

It might perhaps be wise if I made a very brief statement about the relationship of that board to the administration of N. R. A.

The CHAIRMAN. You may proceed.

Senator KING. This is the Consumers' Advisory Board, the organization with which you are now connected?

Mr. BLAISDELL. The organization with which I am now connected is the Consumers' Division of the National Emergency Council, Senator. I was until February 1 the executive director of the Consumers' Advisory Board of N. R. A.

Senator KING. What relation did Mrs. Rumsey—I did not know the lady—have to that organization?

Mr. BLAISDELL. Mrs. Rumsey was the former chairman of that board. She was chairman from the time of the organization of N. R. A. until her death early in the winter.

Senator KING. Who succeeded her?

Mr. BLAISDELL. Mrs. Emily Newell Blair succeeded her, although there was a period of about 2 months when there was no chairman of the Board. During that period I happened to be acting as executive director.

The Consumers' Advisory Board is one of the three advisory boards of N. R. A. There is an Industrial Advisory Board, the Labor Advisory Board, and a Consumers' Advisory Board. The idea of having a Consumers' Board, I believe, had never been tried before in Government machinery. There had been some experiments with public representatives before commissions, paid by the Government, but I think this is one of the first instances, if not the first, where in an administration, individuals were definitely set aside to perform that function.

Senator COSTIGAN. In connection with the activities of business?

Mr. BLAISDELL. In connection with the activities of business, yes, sir.

There are two other organizations at present which should not be confused with the Consumers' Advisory Board. One is the Consumers' Counsel of the Agricultural Adjustment Administration. The other is the Consumers Division of the National Emergency Council.

The Consumers' Counsel of the Agricultural Adjustment Administration has no administrative connection with the Consumers' Advisory Board. It is a part of the administration of the Agricultural Adjustment Administration in the Department of Agriculture.

The Consumers Division of the National Emergency Council has under its jurisdiction about 150 county consumer councils, which are voluntary groups of consumers scattered over, I believe, all of the 48 States. There may be one or two States in which we do not have councils.

Senator GORE. But amounting to about 150 counties altogether?

Mr. BLAISDELL. Yes, sir.

Senator GORE. That is out of several thousand, over 3,000 counties?

Mr. BLAISDELL. Yes, sir.

Senator COSTIGAN. Why have no relations been established between your Board and the consumers' representation of the Agricultural Adjustment Administration?

Mr. BLAISDELL. Senator, the Consumers' Division has had, in addition to its function of organizing and servicing these councils, also the task of supervising a relationship between these two organizations. It has never been made an executive relationship. It has been a supervisory relationship, because those boards are both under control of their own administrations.

Senator GORE. Just what do you undertake to do?

Mr. BLAISDELL. The function of these councils, Senator, has been to bring to the attention of both the Agricultural Adjustment Administration and the National Recovery Administration, the particular things that happen in those communities which may be significant from the standpoint of the way those acts are functioning in the communities. That is to say, the councils around the city of Boston may have a good deal to say to us as to what they regard as the effects of the Agricultural Adjustment Act.

On the other hand, some of the councils in the West have had a great deal to say to us about what they thought of the effects of N. R. A., and it has been important to keep these Administrations aware, as far as possible, of these reactions in the country. The information has been very valuable to the Consumers' Advisory Board and to the National Recovery Administration and also to the Agricultural Adjustment Administration.

Senator GORE. Is your board a sort of clearing house for this consumer information and experience?

Mr. BLAISDELL. That is the work of the Consumers Division, with which I am at present connected, but that is not the work of the Consumers' Advisory Board, which is a part of N. R. A. The work which I at present am doing is with the Consumers Division of the National Emergency Council.

Senator BARKLEY. There is a good deal of confusion in the public mind, and in the private mind as well, as to the functions and relationships between the N. R. A. and the N. E. C. Could you in a word or two describe just what that is?

Mr. BLAISDELL. Senator, I should like to be relieved of answering that question.

Senator BARKLEY. All right; you need not.

Mr. BLAISDELL. There is a technical set-up there with which I myself am not too familiar.

Senator BLACK. Are you with the N. E. C.?

Mr. BLAISDELL. Yes, sir.

Senator BARKLEY. He says he is with the National Emergency Council now.

Senator BLACK. That is what I thought.

Mr. BLAISDELL. Senator Black, I do not wish to dodge answering the question. I will be glad to attempt it if you wish me to.

Senator BARKLEY. How were the 150 counties in which you have these consumer-council organizations selected? Did you look over the country and select a certain number in which the need for such a council seemed to be greater than in others, or did you try to stretch out and try to organize such a council in all of the counties of the country? How did you select the 150; by what process?

Mr. BLAISDELL. Senator, I was not with the Consumers' Division at that time. My understanding is that originally they had the conception of a council in every one of the three thousand-and-odd counties. The immensity of the job itself made them decide that they wanted to try an experimental 200 councils.

Senator BARKLEY. These are voluntary organizations?

Mr. BLAISDELL. They are voluntary organizations.

Senator BARKLEY. They carry no compensation?

Mr. BLAISDELL. They carry no compensation.

Senator BARKLEY. That makes plain the small number of counties. [Laughter.]

Mr. BLAISDELL. The only thing which they receive from the Government is the franking privilege for official business, and the small amount of office space, and so forth.

Senator GORE. Are these counties supposed to be typical of their sections of the States or localities, sort of cross-sections, or a catch-as-catch-can, or do you know? I believe you intimated that you did not know.

Mr. BLAISDELL. It was not catch-as-catch-can, Senator. It was an attempt to blanket the country, as far as possible, in a sort of spot checking system. I believe the areas which are covered touch approximately 75 percent of the population, but that, of course, should not be played up too much.

Senator KING. Who was the author of the plan to establish these councils throughout the United States? Where did it originate? With the N. R. A. or the A. A. A. or with Mr. Hopkins?

Mr. BLAISDELL. Senator, I believe it was one of those things which a good many people had a part in. I believe Mrs. Rumsey was more concerned in it than anyone else.

The CHAIRMAN. Proceed.

Mr. BLAISDELL. I emphasized the advisory relationship of the Consumers' Advisory Board to the National Recovery Administration. This relationship is one where we have no administration responsibility for carrying out the act. It is our function to supply it to the Administrator or to the National Recovery Board—I am

speaking now of the Consumers' Advisory Board—our judgment as to the way any particular action of the N. R. A. is carried out to affect the interests of consumers, and that has been the point of view which this Board has consistently adopted.

Senator LA FOLLETTE. Before you go any further on that, I am confused sometimes by this statement of "consumers." The impression is created often that there is a vast section of the population that only consumes, and another vast section that produces, and that their interests are completely opposed to each other. When you say, "How it is going to affect the interests of consumers", before you go any further with that, I would like to get your idea of how you regard the consumer. I mean, what differentiation do you make between a consumer and a producer? For example, here is a man employed in the men's clothing industry that we have been hearing so much about in the last few days. He and his family are consumers, are they not?

Mr. BLAISDELL. Yes, sir.

Senator LA FOLLETTE. When you speak of consumers and the work of your "Consumers' Advisory Board", what conception have you of the consumer interests as distinguished from that of producers and distributors?

Mr. BLAISDELL. Senator, the conception which we have taken is that every producer is a consumer. There are very few of the population that are only consumers. It is important to a worker not only how much money goes into his pocket, but it is also important what that money will buy.

Senator LA FOLLETTE. Precisely.

Mr. BLAISDELL. And it has been our attempt to see that that money will buy as much as it possibly can be made to buy under decent conditions. I will go a little further with that in saying that in my judgment the consumer's interest is best served by the largest volume of production that we can get.

Senator LA FOLLETTE. And would you include in that, increased purchasing power, both in the form of higher wages and also in the actual earnings in real wages?

Mr. BLAISDELL. Yes, sir.

Senator LA FOLLETTE. So that when you think of the consumer, then, you think, by and large, of all people including producers?

Mr. BLAISDELL. Absolutely.

Senator KING. As I understood you, Doctor, in the N. R. A. they have an organization called the Labor Advisory Board?

Mr. BLAISDELL. Yes, sir.

Senator KING. Presumably to look after the interests of labor?

Mr. BLAISDELL. Yes, sir.

Senator KING. Then they have another organization which looks after the producers, relating to prices and price fixing, or such arrangements as are incidental to the carrying out of commercial and industrial policies?

Mr. BLAISDELL. Yes, sir.

Senator KING. Then you have the Consumers Advisory Board which is assumed to consider the interests of the consuming public, whether that consuming public is a producer or whether it is both a producer and a consumer?

Mr. BLAISDELL. That is roughly correct, Senator.

Senator KING. Primarily, you are interested to see that prices are fair and just and they are not monopolistic, and that the consumers are not gouged by other organizations in the country?

Mr. BLAISDELL. Yes, sir. May I expand on Senator La Follette's question a little bit further? We carry on commercial transactions all the time; there is always a seller and for every seller there has got to be a buyer. The sellers usually have been fairly well organized among themselves. The buyers seldom are organized. The natural approach, then, of a group of men who are engaged in a manufacturing activity or other producing activity is to endeavor to secure any advantage they can as sellers. The buyer's position very seldom gets put.

As a matter of fact, I believe there are very few provisions in any codes which regulate buying terms except as sellers may want to regulate the terms on which they sell, and naturally, they would endeavor to seek their own interest in that organization.

We have endeavored to keep uppermost the buying position at all times—what would we as buyers want here, while over on the other side, you would have the sellers. In that sense we have been a partisan organization. We have endeavored to present that point of view at all times.

Senator BARKLEY. Now, let me ask you there. Of course, one of the objects of the Agricultural Adjustment Act was to increase the prices of agricultural products to the farmer?

Mr. BLAISDELL. Yes.

Senator BARKLEY. And one of the objects of the N. R. A. was to bring about greater employment among working people and increase their wages and increase their purchasing power as individuals and as a group. In both cases, the increase in the prices would naturally be reflected in an increase in the price to the consumer. Has it been the function of your organization or any of these consumer organizations to resist the efforts of the Agricultural Department to increase farm prices so as not to reflect those increases in the prices to the consumer, or in the manufacturing industries, by reason of increased wages? To what extent has there been any controversy or contest between the consumers' organizations and these others that have sought to increase prices to the producers, whether in the field or factory, and naturally to the consumer?

Mr. BLAISDELL. Senator, the Agricultural Adjustment Act was a statement of the policy of the Congress, with definite provisions for raising prices of farm commodities. The National Industrial Recovery Act was primarily directed to increasing incomes rather than prices.

Senator BARKLEY. It is the same thing. The income of the farmer was to be increased, and the income of the industrial worker and the industrial operator; it all revolves around income.

Mr. BLAISDELL. It revolves around income; yes, Senator. But the difference is that in the A. A. A. we had a specific mandate to raise prices. It was the position of the Congress, I believe, that the agricultural section of our population was not receiving its proper share of the national income, and that the price-raising device was important from that standpoint. That was achieved, as you know only too well, by a certain shortening of production in agriculture. At the same time, those who have studied that problem, are con-

vinced that the second most important factor in the income of farmers is a high purchasing power in the hands of industrial consumers. Is it possible to solve that dilemma?

It was the conviction, I believe, of the administration and the Congress that that could be solved; that if by holding industrial prices down, increasing volume, incomes in the industrial sector could be increased at the same time that incomes of agricultural producers were increased by raising prices and a shortening of production at that end.

It seems to me that that is the only premise on which the picture makes sense. And we had industrial production at a very low level. We had agricultural production at a very high level. The effort primarily on the industrial end would seem to be how to get the volume of production in industry up.

Senator BARKLEY. Then the function of this consumers' organization, I suppose, might be said to see that no undue advantage was taken of the consumer by those whose costs of production were legitimately increased by either the A. A. A. or by the increased wages or the shortening of hours of labor or any other condition.

Mr. BLAISDELL. I think that is a fair statement, Senator.

Senator GORE. It was from the buyers' or the consumers' point of view in trying to maintain the purchasing power of the dollar and keep it up to as high a point as was reasonable.

Senator KING. Senator, I do not think that the witness understood your question.

Senator GORE. I say, you were acting from the buyers' or consumers' point of view when you were trying to maintain the purchasing power of the dollar that you mentioned a few minutes ago?

Mr. BLAISDELL. Yes, sir.

Senator GORE. You were trying to keep the purchasing power of the dollar up?

Mr. BLAISDELL. Yes, sir.

Senator KING. You did not regard the N. R. A. or the A. A. A., as mandates on the part of the Agricultural Department or the N. R. A. to increase prices to the extent that they would be oppressive to the consumers, which would be a part of the farmers themselves as well as a part of the working classes in industries; in other words, as I understand your organization, it was to prevent monopolistic practices, monopolistic control of industries, which would raise prices so high as to interfere with the consuming public.

Mr. BLAISDELL. Yes, sir.

Senator KING. And to scrutinize the acts of the A. A. A. and to scrutinize the act of the N. R. A. or any of the forces operating in our industrial and economical life, with a view to determining whether there were unfair practices, whether there were monopolistic tendencies which would result in unjust and unfair prices or costs to the consuming public.

Mr. BLAISDELL. I think that is a fair statement, Senator.

Senator KING. I might add that you understood, did you not, that, for instance, the Sherman antitrust law and the antitrust laws did not seek to prevent production, but did seek to prevent combinations, which would be monopolistic or restrain trade to the disadvantage of the consumers of our country.

Mr. BLAISDELL. That is my understanding of the purpose of the antitrust laws, Senator.

Senator BLACK. May I ask you one question there? Did I understand it is your conception that it was the duty of your board to try to see that production was not reduced in manufacturing, but that production was increased, upon the assumption that the larger volume of production would bring about a smaller cost per unit of the things produced?

Mr. BLAISDELL. I would say that was a fair interpretation of our position, Senator.

Senator BLACK. And you did not, as representing the consumer, believe that it was wise to maintain provisions in the codes to punish people for producing too many stockings? You went on the theory that if they produced enough stockings, the cost per unit would be a smaller amount.

Mr. BLAISDELL. I think that is a pretty sound principle.

Senator BLACK. Are you in sympathy with a code which permits a factory to be fined because it produces too many stockings?

Mr. BLAISDELL. Senator, the position of our board has been against any controls on production. That is to say, the general position. I would say that there might be a few exceptions where it would be universally agreed that there might be what, for lack of a better word, we might call "overcapacity" in a particular industry. That is conceded. Industries are getting out of line all the time. Whether it was wisdom under the National Industrial Recovery Act to permit that type of regulation seems questionable in my mind.

Senator BLACK. The reason I asked about that particular one was because I noticed in the paper that other day where some factory had been fined for producing too many stockings.

Mr. BLAISDELL. I am not acquainted with the incident.

Senator BLACK. Are you familiar with that code? Did you or your organization protest against the restriction in the production of those particular commodities?

Mr. BLAISDELL. Senator, I cannot answer that question from my own knowledge. I think we could get the information for you very shortly.

Senator COSTIGAN. Mr. Blaisdell, in undertaking to represent the consumer, did you feel called upon to justify a return to the more or less uncontrolled competitive conditions of 1929?

Mr. BLAISDELL. Senator, we felt that the uncontrolled conditions of 1929 were probably very undesirable, and that some form of control——

Senator COSTIGAN (interrupting). By the Government?

Mr. BLAISDELL. By the Government, was very desirable.

Senator COSTIGAN. Did you interpose any obstacles to minimum wages, maximum hours, and shorter hours?

Mr. BLAISDELL. At no time, Senator. Our board has consistently favored the principles of minimum wages and maximum hours. We have felt that those are both socially desirable, and that there is considerable evidence to support the fact that in a number of industries the shortening of hours and the raising of wages will actually bring about increased production without increasing costs.

Senator GORE. Have you any specific instances where the statistics seem to verify that theory or assumption?

Mr. BLAISDELL. If I may refer to Senator Costigan's State, I believe that there was a fuel and iron company there.

Senator COSTIGAN. The Rocky Mountain Fuel Co.?

Mr. BLAISDELL. Yes, sir. Which actually was operated and carried out on those principles.

Senator GORE. Was that the one owned by the lady who is now——

Senator COSTIGAN. Yes, Miss Roche, an Assistant Secretary of the Treasury, is the chief stockholder, and has directed its policies.

Senator GORE. What were the increases in wages, do you happen to know?

Mr. BLAISDELL. I do not happen to know. I am giving that as general knowledge. That is not a matter that has come under my purview at this moment.

Senator HASTINGS. I was wondering whether you are prepared to state, either now or before you finish with your testimony, whether in your judgment the N. R. A. as a whole has worked to the best interests of the consumer or against the best interests of the consumer? If you can answer that and are prepared to give that as your individual judgment?

Mr. BLAISDELL. Senator, I would have to break that question down a little, if I may.

Senator HASTINGS. All right. Some time before you finish.

Mr. BLAISDELL. I will be glad to take it up right now. I think I can answer it fairly quickly. It seems to me that there was an early period which was covered historically by the President's Reemployment Agreement, in which consumers were not harmed at all, in fact were very definitely benefited.

Senator GORE. What was that? I did not catch your statement.

Mr. BLAISDELL. I said that during the period of the President's Reemployment Agreement when industry voluntarily accepted a reduction of hours and an increase in the minimum wages, that consumers were very definitely benefited by those actions.

Senator KING. Because of increased employment?

Mr. BLAISDELL. Yes, sir; and increases in the workers' incomes. I believe then there was a second period during which codification was proceeding. I believe that that period had a very definite effect in establishing confidence in the business men, when they were willing to proceed with production and thereby benefit consumers.

I also believe that after the period of codification was completed and some of the restrictive provisions which have been contained in some codes, that some of the effect has been detrimental to consumers.

It is very difficult to get any figures to prove any of those statements. They are not a type of thing that can be submitted to statistical analysis very carefully. I simply speak it and submit it as my personal judgment.

Senator GORE. There has been a recent agreement by consent given by some of these authorities to a reduction of 25 percent in the output of cotton textiles, I believe?

Mr. BLAISDELL. I have seen that statement in the papers also, Senator.

Senator GORE. I suppose that was based on the fact that there was overproduction in that line of business?

Mr. BLAISDELL. I am not acquainted with the details of the case; I am sorry.

Senator KING. Was it overproduction or underconsumption?

Senator GORE. That is the question of the chicken and the egg. I always figured it as underconsumption, myself.

Senator KING. There are lots of people today that do not have sufficient money to buy cotton hose, not to speak of woolens or silk.

Mr. BLAISDELL. I think so, Senator. A document has been put in my hands to answer Senator Black's former question regarding the hosiery code.

Senator KING. Senator Black is not here. Perhaps you had better wait until he returns, if it is agreeable to you.

Mr. BLAISDELL. I will be glad to hold this.

Senator KING. May I ask while you are examining that, if at the hearings on January 9 of this year there were not a number of papers read by the staff members of the Consumers' Advisory Board in which there was a—I will not say a critical, but an examination of the N. R. A. and its operations, and in which there were statements calling attention to price fixing and the effect of the N. R. A. in raising prices and the deleterious effects upon the consuming public?

Mr. BLAISDELL. Senator, you have in your hands, I believe, a series of statements prepared for that public hearing. They were based upon the best information that we could get at the time. We believe them to be accurate.

Senator KING. One was by Dexter M. Keezer of the Consumers' Advisory Board?

Mr. BLAISDELL. Yes, sir.

Senator COSTIGAN. Now the president of Reed College, Oreg.

Mr. BLAISDELL. Yes, sir.

Senator KING. Another by Ruth Ayres and Enid Baird of the Consumers' Advisory Board?

Mr. BLAISDELL. Yes, Senator.

Senator KING. Another by Leander Lovell?

Mr. BLAISDELL. Yes, sir.

Senator KING. Is he still with your organization?

Mr. BLAISDELL. Yes, sir.

Senator KING. A man of integrity and ability, I assume?

Mr. BLAISDELL. In my judgment, yes, sir.

Senator KING. Another by J. M. Hadley?

Mr. BLAISDELL. Yes, sir.

Senator KING. Another by W. L. Chandler?

Mr. BLAISDELL. Yes, sir.

Senator KING. Another by Constance Southworth?

Mr. BLAISDELL. Yes, sir.

Senator KING. Devoted to price-fixing in the lumber industry?

Mr. BLAISDELL. Yes, sir.

Senator KING. Another by Corwin D. Edwards?

Mr. BLAISDELL. Yes, sir.

Senator KING. Entitled, "Experience with Price Fixing under the Codes"?

Mr. BLAISDELL. Yes, sir.

Senator KING. You are familiar with all of those papers, are you not?

Mr. BLAISDELL. Yes, sir. I am not familiar with the details of all of them. They all passed through my hands before the hearing.

Senator KING. Is your name Thomas C. Blaisdell?

Mr. BLAISDELL. Thomas C. Blaisdell.

Senator KING. One by Thomas C. Blaisdell, Jr., "Prices and Standards of Quality"?

Mr. BLAISDELL. Yes, sir.

Senator KING. Another by Ben W. Lewis, "Emergency Price Experiences"?

Mr. BLAISDELL. Yes, sir.

Senator KING. And several others here. One by Mr. Boffey?

Mr. BLAISDELL. Yes, sir.

Senator GORE. What are those, Senator?

Senator KING. Those are papers which were read, as I understand it, before the National Industrial Recovery Board on the question of modification of the codes, was it not?

Mr. BLAISDELL. There was a public hearing on the general topic of price-fixing and price regulation, and some of these papers were presented orally and others were submitted as part of the record.

Senator COSTIGAN. Have they been published?

Mr. BLAISDELL. Not to my knowledge, Senator Costigan. They have been mimeographed and made available for the public.

Senator GORE. I would like a set of them.

Mr. BLAISDELL. We will be very glad to furnish them.

Senator KING. At my request I was furnished with these mimeographed copies by the consumers' board.

Senator COSTIGAN. Mr. Chairman, without having seen the statement to which Mr. Blaisdell referred a moment ago, it has occurred to me that it might save the committee's time if the typewritten matter which responds to Senator Black's request might be placed in the record. Will that suffice for your purpose, or do you want to comment upon it?

Mr. BLAISDELL. No, sir; I do not need to comment on it. It is simply the consumers board's statement in connection with that.

Senator GORE. Senator, are those documents too voluminous to include in this record?

Senator KING. I am going to ask that some of them be included in the record. I will ask the witness to examine them and aid us in making the selection.

Mr. BLAISDELL. Since the question of the policy of the Consumers' Advisory Board has been raised, I think it might be wise to say just a word about that, Senator. The policy of the Consumers' Advisory Board has been the policy which was stated in the National Industrial Recovery Act itself. It has had no authority for any other policies. Those are clearly outlined, I believe, in the declaration of policy of the act. I won't encumber the record with that—you doubtless have copies of this—I think it is perfectly clear what the policies were. We have followed also the statements of the former Administrator of N. R. A., General Johnson, and we have also followed the statements from time to time by the President in indicating what the policy of the N. R. A. Act was. So that in no sense have we had any policies other than those which the Congress has declared.

Senator KING. Before you proceed, may I read from one of the statements here by Dr. Keezer, the following, and see if that clearly represents the views of the Consumers' Advisory Board, and is a fair summary of the presentation which was made at the conference to which you have referred [reading]:

Representatives of the board have prepared for this hearing summaries of part of this evidence which will be presented subsequently. In general the evidence which necessarily varies from code to code and industry to industry, indicates that:

1. Provisions in codes sanctioning the fixation of minimum prices frequently have been utilized to establish prices so high as to be obviously unfair to consumers.
2. Code provisions designed to disseminate information about prices have sometimes been perverted to use as tools for arbitrary price-fixing.
3. Efforts to maintain fixed minimum prices have often led deeper into a quagmire of hopelessly complicated administrative regulations.
4. Recent efforts of the National Recovery Administration to correct flagrant misuse of price-fixing powers granted to business groups by the codes have dealt with only a fraction of the problems presented.
5. Price-fixing provisions have been increasingly ignored, thus creating a new type of bootlegger and presenting the Nation with another demoralizing example of large-scale contempt for law.
6. Law-abiding agencies and persons respecting prices fixed under the codes have increasingly been the victims of economic discrimination.
7. Numerous business groups initially favoring price-fixing enthusiastically have come to recognize its futility.
8. Price-fixing provisions improperly written into codes of fair competition have served to buttress unfair restraints upon price competition devised before the advent of the National Recovery Administration.

I wish it were possible to complete this chronicle by citing certain cases, but if there are such cases, they have not come to the attention of this board up to this time. We should be very much pleased to have conclusive evidence that, in certain instances, price-fixing has worked. We have been in diligent pursuit of that evidence but it has not come to us.

In the light of such a record it seems entirely clear to this board that the provisions in the codes authorizing price-fixing should almost without exception be eliminated forthwith and any reinstatement made contingent upon a showing of both necessity and desirability far clearer than that which has been submitted prior to the adoption of any one of these provisions. It seems equally clear that safeguards should be thrown about provisions for price reporting which will prevent their perversion for price-fixing purposes.

In mental attitude a step was taken in this direction several months ago when the then Administrator of the N. R. A. promulgated an office order (no. 228) which called for wide-spread elimination of price-fixing provisions in codes, except in cases of emergency to be declared by the Administrator. However, very little has been done to put this order into effect. Prior to the issuance of the order of June 7 of last year approximately 430 codes which contained price provisions in conflict with it had been approved. There have been, of course, certain stays of different types which did not give the price-fixing provisions of those 430 codes full effect, but the record shows only about 12 of the 430 have been modified to bring them into conformity with the order.

Further the experience since that time has indicated that the provision for resort to price-fixing in emergencies, set forth in office order no. 228, was ill-advised. A summary of that experience has been prepared for submission at this hearing by a representative of the Consumers' Advisory Board.

In its proposal of a policy on price-fixing the National Industrial Recovery Board states that it "recognizes the value of * * * emergency price provisions." A continued assumption that there is value in such provisions seems to us to encourage a continuation of the unfortunate experience with emergency price fixing. It invites efforts to convert "the usual case" in which the National Industrial Recovery Board proposes to bar price-fixing into an "emergency." And price-fixing per se has been demonstrated to have no capacity to administer effectively to industrial emergencies.

Senator KING. I want to have this entire statement put in the record of Dexter M. Keezer of the Consumers' Advisory Board.

(The statement directed to be incorporated in the record will be found at the close of the day's session.)

Senator GORE. Prices in the long run are based upon cost and correspond to cost. Does not any policy of price-fixing ultimately resolve itself into a scheme of cost-fixing?

Mr. BLAISDELL. Senator, I am afraid there is a great deal of truth in your statement that once you fix prices you tend to build your costs to match the prices.

Senator GORE. In a monopoly you can fix prices because you can relate them to costs because there are only 1 or 2 concerns involved, but where there are a great many competing concerns with operating costs varying, is it not almost a financial, political, and human impossibility to do it?

Mr. BLAISDELL. I will accept the statement of your judgment, Senator.

The CHAIRMAN. Mr. Green will be here tomorrow, and perhaps he may consume the forenoon. The clerk of the committee will advise you when you are next to appear, Mr. Blaisdell. You will follow Mr. Green.

Mr. BLAISDELL. Senator, may I make a very brief statement in view of the fact that you have read these particular statements into the record?

Senator KING. Yes; make it very brief.

Mr. BLAISDELL. This statement was a statement placed in the record as an argument at a hearing called by the National Industrial Recovery Board itself in an endeavor for that Board to find to find a sound outlet for its policy. The Board itself was exploring the problems. It was our function to present as strong a case as we could in favor of a particular point of view. I hope that may be kept in mind in connection with that statement.

Senator KING. You may elaborate if you care to later, on that, and we will offer the record more of these statements.

The committee will adjourn until tomorrow morning at 10 o'clock.

(Whereupon at 12 noon, the adjournment is taken until Friday, Mar. 29, 1935, at 10 a. m.)

(By direction of Senator King the following statement of Dexter M. Keezer at public hearing on Price Provisions in Code of Fair Competition Jan. 10, 1935, is inserted in the record.)

STATEMENT OF DEXTER M. KEEZER, ON BEHALF OF THE CONSUMERS' ADVISORY BOARD

Mr. KEEZER. Mr. Whiteside, ladies, and gentlemen: I have here a brief statement which is in the nature of an outline of a larger presentation to be given by the Consumers' Advisory Board later. Because it is an outline, it is, I should say, oh, in a wee measure, argumentative. I think, however, that the evidence to be presented subsequently will support what here are conclusions which are not supported by detailed evidence. I will read the statement. [Reading:]

"The proposed policy on price-fixing announced by the National Industrial Recovery Board in calling for this hearing seems to us to be pointed definitely in the right direction, though we think that it is too tender in its approach to the crucial problem to which it is addressed. If the National Recovery Administration is to justify its name, in any large measure, we advise that the policy be strengthened in a manner which we will outline subsequently and put into effect immediately.

"We realize that you will find no novelty in this attitude on the part fo the Consumers' Advisory Board. It opposed large-scale experimentation with price-fixing 18 months ago, and has consistently advocated such a policy since. However, there is this immortant strength in the position of the Consumers' Advisory Board at this time. Its views on price-fixing are now supported by a weight of experience which could not be available in the earlier months of N. R. A.

"Initially, in arguing against the incorporation of price-fixing arrangements in the code, except in a very limited number of cases and then under close public supervision, the Consumers' Advisory Board inevitably had to argue from the

experience with such devices before the coming of the N. R. A. This experience suggested forcibly that if price control devices were generously employed and placed in private hands there would be neglect of President Roosevelt's warning that "If we now increase prices as fast and as far as we increase wages, the whole project will be set at naught"—a warning given when he signed the National Industrial Recovery Act.

"Advice to act accordingly was set forth by the Consumers' Advisory Board in directions to its staff advisers and in a comprehensive memorandum on "Suggestions for Code Revision" which was submitted to the Administrator on February 19 of last year. Your attention is invited to those statements. We will not detain you by summarizing them since the proposed policy on price-fixing suggests that since they were written the National Industrial Recovery Board has come to recognize in large part the validity of the arguments there set forth.

"At the time they were advanced, however, these arguments were dismissed for the most part as theoretical, and the Consumers' Advisory Board was, in the nature of the case, unable to prove by experience that it was right. The experience remained for the future to unfold.

"The Board did, however, undertake to keep a check upon the results of the price-fixing arrangements embodied in many codes, and at a hearing on prices inaugurated precisely a year ago presented a large volume of evidence indicating that these provisions were definitely retarding recovery by making possible an increase in prices which was outstripping the increase in wages—evidence indicating that, in fact, the President's warning was not being heeded. As an important part of the record of experience with price-fixing provisions which this hearing is designed to generate we invite your attention to the price studies presented by the Consumers' Advisory Board at the hearing a year ago.

"Subsequently the responsibility for keeping a detailed and comprehensive record of the results of the price-fixing provisions in codes was concentrated in the Research and Planning Division. Consequently, this Board is not prepared to present such a record of experience at this time. However, the large volume of evidence which has come to the attention of the board in the performance of its advisory duties has been almost universally unfavorable to the price-fixing provisions in the codes. Representatives of the Board have prepard for this hearing summaries of part of this evidence which will be presented subsequently. In general the evidence, which necessarily varies from code to code and industry to industry, indicates that:

"1. Provisions in codes sanctioning the fixation of minimum prices frequently have been utilized to establish prices so high as to be obviously unfair to consumers.

"2. Code provisions designed to disseminate information about prices have sometimes been perverted to use as tools for arbitarry price fixing.

"3. Efforts to maintain fixed minimum prices have often led deeper into a quagmire of hopelessly complicated administrative regulations.

"4. Recent efforts of the National Recovery Administration to correct flagrant misuse of price-fixing powers granted to business groups by the codes have dealt with only a fraction of the problems presented.

"5. Price-fixing provisions have been increasingly ignored, thus creating a new type of bootlegger and presenting the Nation with another demoralizing example of large-scale contempt for law.

"6. Law-abiding agencies and persons respecting prices fixed under the codes have increasingly been the victims of economic discrimination.

"7. Numerous business groups initially favoring price fixing enthusiasticallty have come to recognize its futility.

"8. Price fixing provisions improperly written into codes of fair competition have served to buttress unfair restraints upon price competition devised before the advent of the National Recovery Administration.

"I wish it were possible to complete this chroncile by citing certain cases, but if there are such cases, they have not come to the attention of this board up to this time. We should be very much pleased to have conclusive evidence that, in certain instances, price fixing has worked. We have been in diligent pursuit of that evidence but it has not come to us.

"In the light of such a record it seems entirely clear to this Board that the provisions in the codes authorizing price fixing should almost without exception be eliminated forthwith, and any reinstatement made contingent upon a showing of both necessity and desirability far clearer than that which has been submitted prior to the adoption of any one of these provisions. It seems equally clear that safeguards should be thrown about provisions for price reporting which will prevent their perversion for price-fixing purposes.

"In mental attitude a step was taken in this direction several months ago when the then Administrator of the N. R. A. promulgated an office order (no. 228) which called for wide-spread elimination of price-fixing provisions in codes, except in cases of emergency to be declared by the Administrator. However, very little has been done to put this order into effect. Prior to the issuance of the order of June 7 of last year approximately 430 codes which contained price provisions in conflict with it had been approved. There have been, of course, certain stays of different types which did not give the price-fixing provisions of those 430 codes full effect, but the record shows only about 12 of the 430 have been modified to bring them into conformity with the order.

"Further, the experience since that time has indicated that the provision for resort to price fixing in emergencies, set forth in office order no. 228, was ill-advised. A summary of that experience has been prepared for submission at this hearing by a representative of the Consumers' Advisory Board.

"In its proposal of a policy on price fixing the National Industrial Recovery Board states that it "recognizes the value of * * * emergency price provisions." A continued assumption that there is value in such provisions seems to us to encourage a continuation of the unfortunate experience with emergency price fixing. It invites efforts to convert "the usual case" in which the National Industrial Recovery Board proposes to bar price fixing into an "emergency." And price fixing per se has been demonstrated to have no capacity to administer effectively to industrial emergencies.

"The prompt implementing of the price policy proposed by the National Industrial Recovery Board in projecting this hearing would presumably eliminate price-fixing provisions from all but a small handful of codes.

"It does not follow, however, that this salutory step would eliminate price fixing in all industries whose codes are so modified. There was private price fixing in numerous industries before the advent of N. R. A., and by maintaining industrial prices at arbitrarily high levels such price fixing did much to intensify the depression. I trust Mr. Bean will elaborate on that point. There is no reason to believe that the proposed policy on price fixing will eliminate it, particularly since the N. R. A. has served to bring many business groups into closer communion.

"Therefore, if the National Industrial Recovery Board is to obtain its objective in any large measure it must make a more trenchant attack upon price fixing than that outlined in the proposed policy. It may be argued that if the Board eliminates those provisions in the codes which directly thwart price competition it will have done all that comes within its jurisdiction. Insofar as a legal question is involved the Consumers' Advisory Board defers to those expert in such matters. But as an economic proposition it calls attention to the fact that every N. R. A. code is officially designated as a "code of fair competition". As such, it cannot properly apply to an industry which has eliminated price competition by private agreements or attained a position where prices are fixed on a monopolistic basis. To validate its codes of fair competition steps must be instituted by the National Industrial Recovery Board to strike down such price control in industries operating under codes. A representative of the Consumers' Advisory Board will present a more detailed statement on this subject.

"In a price policy designed to revitalize the concept of fair competition, quality standards and labelling seems to the Consumers' Advisory Board to have a very important place which is not recognized in the policy on price fixing proposed by the National Industrial Recovery Board. In some cases quality standards have been incorporated in codes as essential elements in schemes of production control and price fixing. In others the absence of adequate quality standards has contributed its bit to the breakdown of price-fixing schedules. But it does not follow that quality standards and price fixing go hand in hand. On the contrary quality standards properly safeguarded and more particularly accurate grade labels have great potentialities to promote and protect fair price competition. A representative of the Consumers' Advisory Board will present to you a further statement on this subject.

"In urging the N. R. A. to abandon price fixing in favor of a policy of fair competition the Consumers' Advisory Board is guided not only by the demonstrated effects of price fixing in specific cases but by its relation to a workable scheme of national economic recovery as a whole. The obvious purpose of virtually all price fixing provisions is to raise prices. When such provisions fail to do this they fail to serve the purposes of their sponsors. Even when not realized, however, the legally validated intention to raise the prices of products governed by N. R. A. codes presents a serious threat to economic recovery. This is indicated

by a study of relationships between prices and the capacity to pay them, as set forth in charts prepared by the Consumers' Advisory Board. An explanation of the charts is embodied in a separate statement to be submitted by a representative of the Board.

"In general the charts, as well as other studies of the relationship of prices to capacity to pay them, indicates that since the inauguration of N. R. A. any increase in money earnings per industrial worker has been more than offset by the increase in the cost of living. They indicate further that increased prices have vitiated in substantial part the increase in money income of the nation as a whole. Under such circumstances it is clear that a policy which validates the purpose to raise prices works directly against national recovery, as truly measured in terms of employment and production. [Applause.]"

Mr. WHITESIDE. What is the most important single group of products that go into the cost of living?

Mr. KEEZER. I think that food is about 40 percent.

Mr. WHITESIDE. May we then be quite clear on the fact that we had nothing to do with the raising of the price of foodstuffs in N. R. A.? [Applause.]

Mr. KEEZER. May I say, Mr. Whiteside, that though that is true, that does not seem to me to bear directly on the point. The point is that the prices have gone up to the extent indicated, and therefore the economic structure, regardless of who raised the prices, is such that it cannot be further raised.

Mr. WHITESIDE. But would you not rather have $15 and have prices go up than not have a cent in the world? [Applause.]

Mr. KEEZER. Again, I do not think that meets the issue.

Mr. WHITESIDE. I know, but there are some things that we just have to think about. Now, do not misunderstand me. There was a great deal in your presentation. I was not trying to ridicule it, but I do think when you make a statement such as you made, that there should be some qualifying factors that present both sides. I do not mean a long treatise.

Mr. KEEZER. I think on every occasion I have leaned over backwards to point out the fact there has been an increase in the national purchasing power, as a whole, but the employee, the employed individual, has not gained. We have consequently had what tends to be a spread-the-work movement and, in effect a policy which puts a pressure on us that we cannot stand. I think, when you look at it from the point of view of the employer and I from the standpoint of the consumer, we can come to a common understanding on that point.

Mr. WHITESIDE. I think you are right, but from a general standpoint, the condition of the country is very much better today than it was a year ago in spite of N. R. A.

Mr. KEEZER. I do not say in spite of the N. R. A. I have been one of the most ardent supporters of N. R. A. Is it not true that the figures of last year show almost no increase in employment but tend to show a decrease in industrial employment?

Mr. WHITESIDE. No; I think there are figures that represent the proper situation. We have certainly less unemployment by millions than we had 18 months ago; by millions literally. However, let us not get on that abstract discussion. [Laughter.]

Mr. HENDERSON. Did I understand you to say, Mr. Keezer, that the Consumers' Board felt that none of the price-fixing provisions had given any social advantage at all?

Mr. KEEZER. I endeavored to say this, that we have no evidence at this time which indicates that any price-fixing arrangement has been successful in the public interest. There are a few cases where the disposition of the members of the board have been to hold decision in abeyance.

Mr. HENDERSON. How about the coal?

Mr. KEEZER. We have a presentation on coal that is rather striking.

Mr. HENDERSON. You mentioned so many references to other representatives of the board who are to appear that I thought you might have anticipated a number of answers to a number of the questions.

Now, as to this question of an emergency, which is to be covered, again, by another representative of the board, I would like to pin you with it also. Do you assume that there is no time in the course of industrial crises that there should be an intervention, an intervention that can save more than it loses?

Mr. KEEZER. I can conceive of a situation of panic where a public official would intervene to stay the price process during that period of the panic, in order to allow people to recover their senses. I do not know of such cases. I can conceive of them, however, intellectually. [Laughter.]

Mr. HENDERSON. Again, with Mr. Whiteside, I want to get down off the intellectual plane. If that is the case perhaps your complaint against the provision for emergency price fixing in 228 goes perhaps to the criteria we apply.

Mr. KEEZER. I think, Mr. Henderson, it would go to something like this, that what you get, at best there, is a waiting period of 90 days as opposed to 10 days. There was some objection to a period of 10 days. I think it might be magnified in a period of 90 days. If there is nothing done to straighten out the difficulties that underlie the emergency, at the end of 90 days, we come back to the same hurly-burly as before.

Mr. HENDERSON. If you make the assumption that, during the 90-day period, the industry itself will probably be seeking the correctives, is it not about as far as we ought to go in price fixing to make a declaration of a stated minimum price for about 90 days?

Mr. KEEZER. I think that is too far.

Mr. HENDERSON. You think 90 days is too far?

Mr. KEEZER. No; I thought you said "Is not that as far as you could go?" I believe there are eight cases of the application of the emergency provision.

Mr. HENDERSON. Eight cases other than the 250 in the retail solid fuels.

Mr. KEEZER. I have studied them as much as I could, but not as much as I should like to and I think the judgment of an impartial person on those eight cases is that the public interest—those cases have not been served in the application of the emergency provision in those cases. In my statement going to evidence—and we conclude this is to be a hearing on evidence and I have been interested in noticing that it is, in effect, a repetition of what Mr. Whiteside and I have gone through a number of times through the years—we have not been able to find evidence that it has been successful.

Mr. HENDERSON. We considered the requests of numerous industries for the establishment of emergencies and probably took those where there was the clearest picture if something at work which, presumably under the terms of 228, might be remedied or there might be a stay obtained by fixing the price.

Now, you could not determine, and I think you will agree with it, at the beginning of the period that no good purpose would be served for the public by fixing the price. That is a chance you have to take, is it not?

Mr. KEEZER. I think so.

Mr. HENDERSON. To sum up, then, you have no objection to emergency price fixing if it is done under proper criteria and proper standards?

Mr. KEEZER. Yes; I do; on this ground, in that price fixing remains price fixing whether you call it an emergency or what you call it and all the difficulties that attach to price fixing in fair weather attach to it in an emergency. The only cases where I can visualize where the Government will intervene on its own motion and say "We will stop this panic", I conceivably recognize that might be a fine thing to do——

Mr. HENDERSON. Do you know the three major steps of a panic in an industry—destruction of wage scales and destruction of small enterprises?

Mr. KEEZER. What is the third?

Mr. HENDERSON. Panic in the industry is one—that is, in a hysterical temporary situation in which some damage might be done, this would be done by establishing a low minimum price for a period of 30 days.

Mr. KEEZER. In a certain sense that is only a definition of a depression.

Mr. HENDERSON. It is a microcosm of a depression in a particular industry; yes.

Mr. KEEZER. I do not think you can administer successfully a depression by fixing prices. I think there has been a vast improvement in the machinery for trying to work out this condition at the outset. I am not at all persuaded it is an advisable method of dealing with the difficulty in that the trouble that brings out the demand for price fixing does not lie on the outside, and when you try to fix prices without production control, and so forth, it is like trying to cure a cancer by a surface application.

Mr. HENDERSON. I think if you followed that analogy you use, you would do nothing about cancer or do nothing about any troublesome disease in the way of trying to create conditions under which the body could repair itself, and I think that is all that is intended in emergency price fixing—to create a period of stability during which attention can be given to other factors that impinge on price.

Mr. KEEZER. I think there are situations where that would be desirable if, during the period, attention was given——

Mr. HENDERSON. Do you think we should give administrative attention to that type of repair?

Mr. KEEZER. I think any time the N. R. A. authorizes the fixation of a price it assumes a responsibility to the public to regulate the industry. I think anything short of that is an abuse of the consumer and of the public.

Mr. HILLMAN. May I ask you this question, Dr. Keezer, assuming that an industry, like coal—that the evidence would show conclusively that no wage standards could be maintained unless we give them the relief of price fixing, would you be opposed to it?

Mr. KEEZER. I do not believe I understood the question.

Mr. HILLMAN. Would you oppose, in the face of evidence obtained in the best way we know how to get it, that an industry like coal, would be completely demoralized, management and labor, unless we give them price protection?

Mr. KEEZER. Would I then be opposed to price fixing?

Mr. HILLMAN. In that industry; yes.

Mr. KEEZER. I would not, on your statement of the facts that the workers would be demoralized and wages would collapse. I would not.

Mr. HILLMAN. So we would have that limitation. Now, would you say, that if, in the best judgment of whatever agency is established to get the facts, that would be temporary demoralization, with all its implications, in an industry—would you say that it was a wrong attitude on the part of N. R. A. or any other agency, to try to prevent that kind of panic or must we wait until the panic is there for a limited time?

Mr. KEEZER. I think my answer to that, Mr. Hillman, would go straight to the question of fact. I do not think the desire on the part of the industry to do this is a fact. In many cases we have accepted, in the N. R. A., the desire as a substitute for showing it should be done.

Mr. HILLMAN. Assuming that we have an agency that would represent all the interests involved—public interests—and all the participants and that there would be sufficient evidence that unless we come in and give that industry protection for a limited time—90 days—can you see anything wrong in that situation?

Mr. KEEZER. Not as a matter of principle. It goes to the question of what is the fact.

Mr. HILLMAN. Would not that resolve itself to saying that we can get the best agency that would take the public interest into consideration, to make a determination—would it not resolve itself into the proper administration, rather than opposition in principle?

Mr. KEEZER. I think I should qualify my former answer to this extent, that after an arrival at this conclusion after a real showing of the facts, that this industry is demoralized, that there is panic, that something must be done to stay a full flight over a period of time—I should say along with that should go, on the part of any agency that makes the determination, very positive action in the way of dealing with productive facilities and the taking of effective means to straighten it out, that the mere fixing of price will not do.

Mr. HILLMAN. In other words, it ought to be treated as a surgical operation—people should not just perform the operation simply because someone is telling you that they are afraid something will happen?

Mr. KEEZER. That is right.

Mr. HILLMAN. Would you agree with me that we do not want to go back to a condition of just letting things take care of themselves, or do you hold the point of view that if you let things take care of themselves in the long run the situation will take care of itself?

Mr. KEEZER. It is not my reading of our history that we have ever let things take care of themselves. We have heard it asserted that we, of the Consumers' Advisory Board, worship laissez faire. That is not true. We have never had laissez faire. We went into discussion with one set of industries maintaining prices at a very high level and others away down here [indicating] and people just could not——

Mr. HILLMAN. That is exactly what, under a laissez faire arrangement, would happen; some industries that can maintain themselves, maintained themselves through the depression, and there is no such thing as a deflation through all our industries.

Mr. KEEZER. That is right.

Mr. HILLMAN. Therefore, it is up to us to find a method to find relief for all of the people in the industry and give them relief during emergencies.

Mr. KEEZER. Absolutely.

Mr. HILLMAN. I did not think we were in disagreement. I wanted to bring that out because the Consumers' Board is looked upon as always being in opposition.

Mr. KEEZER. That is not true, Mr. Hillman.
Mr. HILLMAN. And I know differently.
Mr. WHITEHEAD. Are there any more questions?
(No response.)
(Mr. Keezer thereupon submitted the following supplementary data for the record:)

"CONSUMERS' ADVISORY BOARD DOCUMENTS TO BE FILED WITH 'GENERAL STATEMENT FOR THE CONSUMERS' ADVISORY BOARD AT THE PRICE HEARING ON JANUARY 9, 1935'

"TENTATIVE POLICY IN HANDLING CODES (SUBJECT TO REVISION)

"From: Dexter M. Keezer and William N. Loucke.
"To: Staff of special adviser on codes.

"SUGGESTED POLICIES IN HANDLING CODES (SUBJECT TO REVISION) SEPTEMBER 28, 1933

"From: Consumers' Advisory Board.
"To: Staff of special advisers on codes.

"SUGGESTED POLICIES IN HANDLING CODES (SUBJECT TO REVISION) OCTOBER 22, 1933

"From: Consumers' Advisory Board.
"To: Staff of special advisers on codes

"POINTS TO BE CONSIDERED IN HANDLING CODES (SUBJECT TO REVISION) NOVEMBER 28, 1933

"From: Consumers' Advisory Board.
"To: Staff of special advisers on codes.

"POINTS TO BE CONSIDERED IN HANDLING CODES (SUBJECT TO REVISION) DECEMBER 1, 1933

"From: Consumers' Advisory Board.
"To: Staff of special advisers on codes."

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

FRIDAY, MARCH 29, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, George, Walsh, Barkley, Connally, Costigan, Clark, Lonergan, Black, Gerry, Couzens, La Follette, Metcalf, Hastings, and Capper.

The CHAIRMAN. The committee will come to order.

Mr. William Green, of the American Federation of Labor, is the witness this morning.

STATEMENT OF WILLIAM GREEN, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR

(The witness was duly sworn by the chairman and testified as follows:)

Mr. GREEN. Mr. Chairman and members of the committee, I am glad to come this morning and speak to you in behalf of labor and to submit an earnest and sincere recommendation that the recommendation of the President of the United States that a new National Recovery Act be passed during this session of Congress be acted upon as expeditiously as possible.

I am glad to submit to the members of the committee the expression of my experience in dealing with the National Recovery Act during the past year and a half, and what I have to say is based upon my experience.

I am certain that we would make a very grave mistake if we failed at this critical point to enact the National Recovery Act. It is unthinkable on the part of labor that we should go back, after having taken such a forward step in economic planning.

Two years ago we recognized that we must have a change in our economic order. We could not go on under the conditions which had developed. President Roosevelt immediately took the lead in initiating that change; industry was ready and eager to follow him, because industry recognized its own inability to find its way out of the depression. Labor also was eager to cooperate with the President in his efforts to bring about a balanced economic order. We realized that any change must be achieved through the cooperation of industry and labor, and that in order for those two groups to cooperate fully there must be Government supervision. Any program of recovery

must depend for success upon the best efforts of all interests in our economic life. The program must be one of social control and not one designed for the benefit of any single group.

On June 16, 1933, with the sympathy and support of every element in our Nation, we began the experiment of the N. R. A. I was convinced at that time and I am still convinced that the fundamental principles of the N. R. A. are sound. The recovery program represents the only plan which is available to us at this time for the rehabilitation of our economic system and for the rehabilitation of millions of men and women who have suffered so bitterly during the depression.

If we abandon the N. R. A., what have we instead? What can be offered?

As far as labor is concerned, there were four fundamental purposes of the N. R. A. I want very briefly to evaluate our progress to date in the light of these objectives. The working men and women of this country relied upon the N. R. A. for (1) the right to self-organization and collective bargaining; (2) an increase in consumer purchasing power; (3) reemployment through an adequate decrease in the hours of work; and (4) fairer working conditions through the elimination of child labor, better protection of health of the workers, and the elimination of various unfair labor practices.

First in importance was the right of self-organization and collective bargaining provided by section 7 (a) of the National Industrial Recovery Act. I shall not pretend today that labor has received all the benefits which were intended from section 7 (a). Many employers, who in their distress agreed to the principles of self-organization and collective bargaining, failed to keep their promises as soon as they found themselves in possession of the rights conferred upon them by the N. R. A. Our experience along that line has been disappointing and bitter. The principle of collective bargaining has never been generally accepted by American industry. Yet organization of the workers and genuine collective bargaining is essential. It is the only way by which the necessary adjustment in hours, wages, and working conditions can be effected. It was never intended that the codes would regulate more than minimum conditions, which would be the starting point for negotiations between employers and employees.

And then from that point it was assumed that the wages, hours, and conditions above the minimum would be worked out through genuine collective bargaining.

In the face of the fierce and determined opposition to organization and collective bargaining, which has always prevailed, it would be absurd to expect that we could accomplish in less than 2 years a complete change in employer attitudes and policies. That is too much to expect. I wish to emphasize, however, that the N. R. A. is the first step in the establishment of real collective bargaining. As such it must not be underestimated; as such it has served a very great purpose.

The N. R. A. has given millions of workers the legal right and inspired their courage to organize for the first time in their lives. It has made them feel free men for the first time in their lives. They will not see that right taken from them without a struggle. On this most important phase of the new economic order instituted by the N. R. A.

we need now to take the second step. We need to strengthen and clarify the collective bargaining provisions of the act. I have already urged that this can best be done by a Federal statute, as proposed by the Wagner labor disputes bill. A Federal statute will extend the self-organization and collective-bargaining provisions of the recovery program to all employees. Collective bargaining must not be looked upon as an emergency measure only. It must become a basic part of the changed economic order which is our ultimate aim.

The second thing which labor expected from the N. R. A. was an increase in consumer purchasing power in order that a better balance in our economic machinery might be achieved. You have already had called to your attention by representatives of the administration certain reports concerning this particular phase of the program. When we attempt to analyze the situation, however, it is clear that there has not yet been opportunity to make the adjustments which such a program requires, and it is also clear that there is much still to be desired in the way of facts and figures if we are fully to evaluate the accomplishments to date.

I wonder if we fully comprehend the magnitude of our task—a great Nation like ours embarking upon an economic experiment of such magnitude as the N. R. A. Can we expect to achieve our full objectives in a year and a half or 2 years? No reasonable man could expect that. We have found that there have been errors in organization, errors in the pursuit of our coding processes. That is natural, because it requires some time to build up an administrative organization alone, and it appears to me that the N. R. A.—it not only appears to me, but it is a sound conviction—that the N. R. A. should be given the chance it deserves, and it has not had that chance. It cannot have it within a year and a half or 2 years, or perhaps 5 years.

On the one hand, we meet with comprehensive reports on the increases in pay roll which have been brought about under the code; and on the other hand, we are faced with the problem of increased productivity and necessary wage adjustments. We are committed to a program predicated upon the increase of the consumption of industrial and agricultural products through an increase of purchasing power. Certainly, no convincing proof has been advanced that our premise is not sound.

I think that we have accepted that economic philosophy that recovery must depend upon buying power, the creation of a market for manufactured goods; and that market is here, ready to consume the goods if we can develop the buying power within the market.

On the contrary, we have, I believe, learned through our brief months of experience that the sharp fluctuations in the activities of our whole economic structure can be, to a degree at least, stabilized through the establishment of minimum rates of pay and maximum hours of work.

Certainly, one of the most outstanding achievements which we have experienced under the N. R. A. is the abolition of certain "sweatshop" conditions which have prevailed for many years and which, under conditions of savage cutthroat competition were becoming increasingly aggravated.

If the N. R. A. has served no other purpose than to have eliminated the sweatshop in the garment-making industry and in other industries where the tendency was always downward toward sweatshop conditions, it has served a noble purpose and justified the experiment.

Hourly wage rates of 7 or 10 cents have been increased to 25 and 30 cents. That is the minimum. Lifted these submerged workers, the forgotten men and women of the Nation who were away down, lifted them up to a minimum basis and in that way bottomed our economic structure with a solid foundation.

I cannot at the moment estimate the great benefit that has come to millions and millions of forgotten men and women, men and women without hope, without help and without support, because they were submerged, they were forgotten, they were unnoticed, they were the victims of economic demoralization.

It is not difficult to imagine what it has meant to the workers concerned to have their hourly rates which prevailed at the depth of the downward surge in our economic activity doubled and tripled through codes of fair competition.

Even though the minimum rates are still low, it did mean a lot to these workers to have their hourly rates doubled and tripled simply because the N. R. A. through its coding processes provided for the establishment of higher minimum rates of pay.

I do not propose to consider at this time the adequacy of the minimum wage rates which the codes have provided, nor will I present before your committee today testimony with regard to the hardship which has resulted because of the fact that provision has not been made for the adjustment of all rates through codified industries. As a general policy, the Administration has not established rates above the minimum in codes of fair competition. There is much to be said for this policy. In any given industry, it is virtually impossible to set standard rates for all occupations which would fully protect the workers involved. Furthermore, any attempt to establish rates throughout industry through codes of fair competition would seriously interfere with the right of employees to determine their rates of pay through negotiations, even though we recognize that code rates established for any class of work are only minimum rates for that class of work. Up to the present time, it has not been possible to include in codes general provisions with regard to the adjustment of rates above the minimum on the basis of which adequate protection could be given to those workers who possess greater skill than that of the common labor which is the basis for code minimum rates.

We feel very keenly that there is yet much to be done before our program of planning for the elimination of unfair trade practices, or unfair labor practices can become a reality. But I say to you most emphatically that what has already been accomplished in lifting minimum rates out of the depths to which they had been driven in 1932 and 1933 is a real achievement. And it is inconceivable that either the Congress of the United States or the people of our great Nation would abandon this great economic experiment which has led to this real achievement. Certainly none of us here could be reconciled to a return to those times when conditions of employment were almost wholly beyond human control.

We have not forgotten the dark days. They still linger within our memory, and we do not want to go back, and we shall protest against going back.

Labor expected from the N. R. A., also, an increase in employment possibilities and a stabilization of employment. In 1933, before the adoption of the N. R. A., we reached the appalling number of almost

14,000,000 unemployed. By October 1933, when the N. R. A. had become effective through the President's Reemployment Agreement and codes, that figure had been reduced to 11,000,000. It stands at about that today, perhaps between 10,000,000 and 11,000,000 today. That men can be put back to work by a reduction in the hours of work has been amply proven. That is one economic fact that has been very clearly established through our experiment in the coding processes. There might have been some doubt in our minds as to whether reduction in hours of labor would create work opportunities for the unemployed, but in this laboratory where we have experimented, we have established that fact. It is no longer a matter for argument or for speculation. It is beyond that.

Our experience of the past 18 months is evidence which cannot be doubted. The N. R. A. has established beyond question the soundness of the principle of reduction of hours of work as a means of bringing about reemployment. That there are still many millions of unemployed is not proof against the soundness of the principle. It is, rather, proof only that we have been too hesitant and timid to reduce the hours of work sufficiently to absorb a major portion of the unemployed. Hours of work have been fixed by most of the codes at 40 per week. That is too long a work week, in view of the present technological and managerial development of industry. Too long.

We have simply not yet been able to adjust our thinking and our planning to the changed economic system which we have been building up since the beginning of this century. We have not yet realized fully that we have come to a place where we can with safety and with profit bring about a drastic reduction in the hours of work. Nevertheless, we have, under the N. R. A. made a long step in that direction. Many industries which before the adoption of the codes were working—listen—60, 70, and 80 hours per week have now reduced their hours of work to 40 or 45. That is genuine progress.

What the reduction of hours of work has meant is shown by a comparison of the index numbers of production, employment, and pay rolls since the N. R. A.

I am not going to burden you with figures, but here are some that appear to me to be significant.

During the period from July to November 1933, while the N. R. A. codes were becoming effective, and while much of industry was still working under the President's Reemployment Agreement, the reports of the Bureau of Labor Statistics show that production declined 30 percent; yet employment during that time increased almost 6 percent, and pay rolls increased 10 percent. I do not believe that a similar record could be found at any other time in our industrial history. The ability of industry not only to maintain but actually to increase employment and pay rolls while production decreased shows what the recovery program can do. If we compare that time with the period from March 1933 to May 1933, when industry was trying to produce as much as possible before it was placed under any restriction as to hours and wages, we see that during those months, while production increased 63 percent, employment increased only 17 percent, and pay rolls increased only 27 percent.

Those two comparisons of production, employment and pay rolls probably show as clearly as anything could show just what N. R. A. has done in this direction. It is highly significant that the codes make possible a steadiness of employment and pay rolls which was

not possible under the former unregulated conditions. In the past, production increases were generally accompanied by longer hours, which restricted and to a large degree prevented increases in employment. We can see from this comparison of code and precode conditions exactly what would happen if the N. R. A. were not continued. We should return at once to a situation in which some men worked 70, 80, or 90 hours per week, while others searched diligently and desperately for work which they could not find.

Senator HASTINGS. Was there very much of that 70, 80, and 90 hours a week?

Mr. GREEN. There was some. There was a great deal; more than you would realize.

Senator HASTINGS. What were the industries?

Mr. GREEN. In many of the service industries. Industries that it is now proposed to be placed outside of the codes. To that I do not agree. The exploitation of submerged forgotten men and women. If you wish, I will get the statistics on that for you.

Senator BARKLEY. I wish you would put that in the record.

Mr. GREEN. I will.

(The following information was subsequently submitted by Mr. Green.)

Complete information on hours of work for all industry is nowhere available, either before or after the N. R. A. It is, therefore, impossible to say just how many employees worked excessively long hours before the N. R. A. became effective, or before yours of work were reduced by the depression.

A few reports received from certain plants show that the following hours were actually worked in June 1929:

	Hours
Cleaning and dyeing, Indiana	60–72
Chemical industry, Texas	70
Petroleum industry, Ohio	88
Petroleum industry, Pennsylvania	70
Aluminum industry, Ohio	77½
Cement, Alabama	84
Cement, Georgia	84
Cement, Iowa	84
Cement, Pennslyvania	84
Lumber, West Virginia	60
Cereal manufacturing, Iowa	84
Wood preserving, Mississippi	70

The following examples, taken from the Monthly Labor Review of July 1933, and August 1933, show some average hours actually worked. Let me call attention to the fact that these are the average hours worked. When the average hours of work are from 60 to 70 per week, it is obvious that many employees must work much longer hours.

Industry	Year	Average hours actually worked in 1 week
Aircraft engine manufacture	1929	50.3
Bakery:	1931	
Atlanta, Ga		61.0
Dallas, Tex		62.0
Houston, Tex		65.0
Worcester, Mass		57.0
Dyeing and finishing of textiles	1932	51.0
Gasoline filling stations	1931	
Charlotte, N. C		68.0
Des Moines, Iowa		63.0
Jacksonville, Fla		73.0
Washington, D. C		59.0

Mr. GREEN. Before proceeding further, I want to refer briefly again to our accomplishments through this laboratory of experiment in the direction of hours as a remedy for an employment. I cannot emphasize that too strongly. Here we are hovering along with ten or eleven million unemployed, a standing army that is a menace to the tranquillity and the peace and order of the Nation, a drain upon the taxpayers of the Nation.

Common sense tells us that it would be far better to put these people back to work, let them share in the amount of work available, than it is to maintain them as dependents of a great nation. That is the reason why labor is urging the adoption of the 30-hour week bill. We want to boldly strike at this evil, and I am convinced, after making a survey of the situation, and after going through my experience of this last 2 or 3 years, that we cannot provide work for our increasing population, for those who are here, on the basis of a 40-hour or a 36-hour work week. We must find the remedy. We must face that fact today, tomorrow, next week or next year.

Senator COUZENS. Have you any statistics, Mr. Green, to indicate the adequacy of skilled labor?

Mr. GREEN. Yes; we have it; but I have not included it in this statement.

Senator COUZENS. I wish you would get it, because I think it is a fact, at least to a degree, that there is a great shortage of adequate skilled labor in many of the industries, and therefore the cutting of hours would not leave an adequate supply of skilled labor. I recognize fully that many of these unemployed to which you refer belong to the common labor, in which they are unable to take the positions of skilled labor, in the case of the shortening of hours. I just would like to have some facts.

Mr. GREEN. I will be glad to do that.

Senator BLACK. May I ask in what industries there is a shortage?

Senator COUZENS. There are a great many I have been informed where there is, and, further, I am not on the witness stand——

Senator BLACK (interposing). I just asked you, Senator.

Senator COUZENS. I want to know the facts. I asked Mr. Green if he could furnish us with information with respect to that statement. I am not able to give it definitely. And besides, I am not on the witness stand. I am asking the witness for information.

Mr. GREEN. I will be glad to do that, Senator. I will be glad to assemble it and supply it to you personally as well as for the benefit of the record.

Senator COUZENS. Thank you.

(Mr. Green subsequently submitted the following statement:)

MEMORANDUM ON UNEMPLOYMENT AMONG SKILLED WORKERS

Trade union reports for the month of March 1935 show high unemployment among skilled workers.

Among skilled craftsmen in the metal trades, 26 percent of the membership were out of work in March 1935, in the country as a whole. This figure covers the following skilled workers: Machinists, molders, pattern makers, metal polishers, blacksmiths, boilermakers and sheet metal workers. In certain cities, unemployment among skilled metal trades workers runs very much higher than 26 percent. For instance, in Cincinnati, 50 percent of the membership were out of work, in Los Angeles 48 percent, in Seattle 44 percent, in Minneapolis 41 percent, Buffalo 35 percent, Chicago and Cleveland 33 percent, Milwaukee 32 percent, Philadelphia, Baltimore and San Francisco 31 percent.

In the building trades, unemployment of skilled workers is even more severe. Figures covering the country as a whole show 59 percent of the membership out of work. This includes the following craftsmen: Asbestos workers, boilermakers, bridge and structural iron workers, carpenters, electricians, elevator operators, lathers, painters, plasters, plumbers-steamfitters, sheet-metal workers, roofers (damp and waterproofing), bricklayers and hod carriers. In many cities, two thirds to three-quarters of the membership are without work: Omaha, Nebr., and Paterson, N. J. 74 percent, New York City and Jersey City, 72 percent, Philadelphia 69 percent, Cleveland 68 percent, Cincinnati 66 percent, Buffalo 65 percent, Chicago, Pittsburgh and Minneapolis 62 percent.

Mr. GREEN. One other example will show what the N. R. A. has done toward a stabilization of employment and pay rolls. From May to September 1934 production decreased 20 percent; there was a period of 6 months in 1932, from January to July, when a similar decrease in production occurred. Now, if we look at the changes in employment and pay rolls during those two periods, we find that under the codes employment decreased only 10 percent, while in the precode period it decreased 16 percent; pay rolls under the codes decreased 13 percent, while in the precode period there was a 23 percent decrease. In other words, when there was no code protection declines in production were accompanied by substantial declines in employment and drastic reductions in rates of pay.

We have not put all of the unemployed back to work, but the program we have initiated under the N. R. A. is capable of bringing about complete reemployment. We need only to reduce further hours of work, while maintaining earnings, to make the recovery program fully effective.

I want to qualify that by adding, providing Congress, in my judgment, will pass the 30-hour-week bill introduced by Senator Black and provide that there shall be established in all of the industrial codes of fair practice, the basic 6-hour day, with such flexibility in the application as provided for in the bill. I think then we have reached almost a solution of our unemployment problem.

Senator BARKLEY. What effect would the passage of the 30-hour bill have upon the necessity of providing minimum hours in the codes?

Mr. GREEN. That is the point I was making, Senator, that if the Black bill were passed, then each code would be required to incorporate in the code as a minimum, the 30-hour work week.

Senator BARKLEY. Would it be necessary to incorporate in it at all if the law provided for a minimum?

Mr. GREEN. It provides for certain flexibility provisions which may be changed by application to the Department of Labor.

Senator BARKLEY. It is not a rigid 30-hour bill?

Mr. GREEN. No; it is not rigid in that respect; it is flexible. We cannot, after all, expect to make more than a beginning in the short time during which the N. R. A. has been in effect. I want to hammer that thought home. The average length of the codes, according to the Division of Research and Planning of N. R. A. is less than 1 year.

Just think of that. We have had a year's experience only. There are some industries that are not coded yet.

Senator COUZENS. What are the prominent outstanding ones that are not coded as yet?

Mr. GREEN. Communications. And also some of the building trades, like structural iron workers and steel erection and fabrication. These are not coded yet, and I believe the public utilities are not coded.

The CHAIRMAN. Mr. Green, may I ask you this question to get your reaction. If the Congress were going to choose as between the extension of the N. R. A. or the adoption of a 30-hour week bill, which in your opinion would labor prefer?

Mr. GREEN. My dear Senator, there is no reason to make any choice; they are companion measures.

The CHAIRMAN. But if there were a choice—that is the question.

Mr. GREEN. We have no choice in that. We are asking for the enactment of both of these measures, sincerely asking for them. We think the one is needed as badly as the other. That is my opinion, and that is the opinion of labor, I know.

The first code adopted, that of the cotton textile industry, did not become effective until July 1933. That isn't very long. It takes time to do what we have tried to do under the N. R. A. It is my opinion that in June 1933 we began an experiment which has had and will have a profound and beneficial effect upon our economic life. But that experiment must not be judged by what it has done in the short time it has been in effect. Great changes are not accomplished within the short space of 2 years. If we have made the start, and can show that we are on the right road, we have done much.

Labor believes we have made a start and that we are going in the right direction. It is not to be expected that those persons who are determined to follow their own selfish interests will endorse the N. R. A. It imposes restrictions upon them; it curtails their freedom to exploit their fellowmen and they resent it. The confirmed chiselers, the people who never have wanted to play a fair game will not favor any kind of regulation.

They want to be free, free as the beast in the jungle.

They are the people who are today determined to do away with all regulation and return to the precode days of long hours, low wages, and intolerable working conditions.

There are certain long established evils in industry which the N. R. A. has succedeed in destroying. Probably the most outstanding is child labor. This in itself is a supreme achievement which will have profound and far-reaching effects upon our social and economic life.

Senator HASTINGS. Have you any figures to show how much of child labor was eliminated by the N. R. A.?

Mr. GREEN. I did have some figures in mind the other day, Senator, and I think it ran between a million and two million. I may be wrong on that. I may have some other figures in my mind, but I will get them.

Senator HASTINGS. I have been told that it was only 10 or 15 thousand.

Mr. GREEN. Oh; it is more than that.

The CHAIRMAN. Put those figures in the record.

Mr. GREEN. I will get them and put them in the record for you.

(The following figures were subsequently submitted by Mr. Green:)

The United States Department of Labor estimates that on the basis of the 1930 census figures, between 120,000 and 150,000 children were gainfully employed in the occupations affected by the 16-year age minimum. For instance

the textile industry, alone, employed approximately 20,000 children; the clothing industries nearly 9,000; and other branches of manufacturing something less than 40,000. Another 8,000 were in hotels and restaurants, beauty parlors and laundries; 17,000 in clerical occupations, chiefly as errand and messenger boys and girls; and 28,000 in stores, etc. With the exception of 14- and 15-year-old children in stores, who may work only 3 hours a day outside of school hours, and so are not in the ranks of full-time employees, all such children under 16 had to leave their jobs for older boys and girls and adults. Exactly how many children under 16 actually held jobs on the date each code went into effect cannot possibly be determined.

Employment certificate figures collected annually by the United States Children's Bureau indicate that between 1930 and 1933 there was at least a 50-percent decrease in the number of these boys and girls going to work in manufacturing and mercantile industries. However, with increasing economic activities there is every indication that the number would return to the 1930 level, or even higher, since already, in 1930, the employment figures were affected by the scarcity of jobs. It was not until 1933 that employment of children under 16 fell at a time of increasing employment in manufacturing industries, this result probably being due to the effect of the codes.

Senator BARKLEY. Can you tell what effect the textile code has had on labor and on production in the textile industry, taking that as an example?

Mr. GREEN. I am of the opinion that the forgotten men, these who were never covered by wage agreements, who worked at indefensibly low wages, and received as much benefit or perhaps more in the textile industry, the cotton textile industry, than in almost any other industry in the Nation. They were lifted from this low, submerged level to the minimum level provided for in the codes, and many of them are the ones to whom I referred when I said they were lifted from 5 or 7 and 8 cents an hour to 10, 20, or 25 cents an hour. The workers, perhaps, above that minimum rate have not benefitted to the textile industry to the extent that they should or that we hope for. There is lots of room for improvement, but the hours of labor were reduced in the textile industry.

Senator BARKLEY. What was the average reduction in the hours of labor?

Mr. GREEN. I am unable to give you that, because I have not included that in my statement, but I will get it for you. But the hours of labor in the textile industry were very substantially reduced.

(The following statement was subsequently submitted by Mr. Green:)

The code for the cotton textile industry reduced hours of work to 40 per week. A study of the textile industry was made by the Bureau of Labor Statistics at the request of President Roosevelt, the results of which were made public in February 1935. This report shows that in July 1933, just before the code became effective, only 50 percent of the men in the North and 39 percent of the men in the South were working less than 50 hours per week. In the North, 15 percent of the men and 25 percent of the men in the South, were working more than 60 hours per week. When the code became effective in August of that year, the maximum hours of work were reduced until 96 percent of the men in both the North and the South, and practically 100 percent of the women employed, were working less than 42 hours per week. By August 1934, the hours were much reduced.

The average number of hours worked per week in cotton textiles fell from 49 in July 1933, to 36 in August 1933, as the code became effective. Since the adoption of the code, the average hours of work in the industry have never reached the code maximum of 40, as the following table will show:

Average number of hours worked per week, cotton textiles, 1933–34

[Source: Trend of employment, Bureau of Labor Statistics]

Month	1933	1934	Month	1933	1934
January	45.0	34.1	July	48.9	30.1
February	45.3	34.9	August	36.5	29.7
March	44.1	35.6	September	35.8	33.9
April	45.0	35.6	October	35.4	34.9
May	47.9	31.5	November	34.6	33.9
June	49.1	28.8	December	33.5	35.5

Senator BARKLEY. What circumstance or condition brought about the segregation of large numbers who were outside of the wage agreements, as you said, a few moments ago? How do they happen to be outside of wage agreements?

Mr. GREEN. Because they are what I referred to as the forgotten men, and it was impossible to organize them in the textile industry. That is one reason. The right to organize was challenged and opposed, and it was impossible to organize these groups and develop wage agreements for them. They represent the group whose wages were fixed by the employer.

Senator BARKLEY. Did this line of demarcation exist in separate units of the textile industry? Say for instance in a factory employing a thousand people, were some of them within wage agreements and others in the same factory outside?

Mr. GREEN. Pardon me, Senator. There is very little if any organization in the textile industry in the South.

Senator BARKLEY. I am not speaking so much of organization.

Mr. GREEN. They would have to be covered by wage agreements.

Senator BARKLEY. Of course it would be difficult to have wage agreements without a group voice to represent them.

Mr. GREEN. Yes.

Senator BARKLEY. So that it is not true then, as I had the impression, that within a given factory there would be some who would be covered by wage agreements and some who would not be.

Mr. GREEN. In some textile industries, wage agreements covered practically all employed. Those were in New England and other sections.

Senator BARKLEY. Where they covered them, they covered all of them?

Mr. GREEN. In some instances, but they were isolated and few.

Senator BARKLEY. Where they did not cover them, they did not cover them at all?

Mr. GREEN. They did not cover them at all where they were not covered. And the percentage of those covered by a wage agreement in the textile industry was comparatively small, because the textile employers have always resisted organization.

Senator BARKLEY. Do you know whether the N. R. A. or the codes have had any effect on production in the textile industry?

Mr. GREEN. In what way?

Senator BARKLEY. Whether it has curtailed it or has increased it, or what has happened to production under the codes?

Mr. GREEN. I think there has been some production control in the textile industry, because they have been limited to a machine produc-

tion of, I think, 80 hours, whereas before there had been no limit. There has been no control previously.

Senator GEORGE. There are two shifts of 40 hours a week.

Mr. GREEN. Yes.

Senator BARKLEY. We have been told, and I suppose it is true, that the textile industry is one of those that is yet near the bottom comparatively, as to its economic condition, in the country.

Mr. GREEN. That is true. It is in bad shape.

Senator BARKLEY. Has that condition been in any way reduced or accentuated by reason of the codes or any agreements entered into under them?

Mr. GREEN. It has certainly been improved by reason of the codes, because it was in a deplorable state before the passage of the N. R. A.

Senator BARKLEY. It has been in that sort of a state for a long time?

Mr. GREEN. For many years. Some improvement came as the result of the codes.

The CHAIRMAN. What is your reaction, Mr. Green, to the voluntary codes, whether control of production and price fixing should be eliminated?

Mr. GREEN. In order to reply to that, Senator, it must all depend upon the character of the industry.

The CHAIRMAN. Take coal, for instance.

Mr. GREEN. The bituminous-coal industry?

The CHAIRMAN. Yes.

Mr. GREEN. There is an industry where regulation is needed, so far as the production control is concerned, and stabilization. Whether that should go so far as to provide for price fixing or not, I am not able to say, but I think it should in some instances, under strict Government regulation and control.

The CHAIRMAN. Where they are not natural resources, such as coal or oil or lumber or something like that, do you believe in a voluntary code, that there should be control of production and price fixing?

Mr. GREEN. Yes, sir.

Senator BARKLEY. Coming back to coal, with reference to control of production, which would chiefly affect the curtailment of production that any Government agency can allocate to the different mining sections of the country its share of production on the basis of equity and fairness to all parties concerned, do you believe that that could be done?

Mr. GREEN. Oh, yes; I favor that. I think it should be done.

Senator BARKLEY. You think that it is possible to do that?

Mr. GREEN. It is, in my judgment.

Senator BARKLEY. Without injustice to any section, or without any prejudice being brought to bear because of the domination of any one geographical section over another?

Mr. GREEN. Yes, sir.

Senator BARKLEY. Or because of any artificial barrier in the way of freight rates and things of that kind?

Mr. GREEN. My judgment is that a plan of allocation can be carried out most successfully under governmental control, supervised by a governmental agency, because each coal-producing field serves a certain territory, and it would be quite easy to make the proper allocation so that exact justice could be done to all of the fields. There is not any question in my mind about it.

And I want to say in connection with the coal industry, that if you allow it to slip back, to go back to the old way, that is a ruined industry. It cannot live under the open competitive plan. Neither the coal operators nor the coal miners can live; I mean economically.

Senator BLACK. Mr. Green, before you leave that subject, you have stated that you believe that the law should provide a regulation of the coal industry, and that in that industry you would favor price fixing. You would not favor price fixing unless the public be protected in some way from unfair prices, would you?

Mr. GREEN. Certainly not, Senator. That must be guarded carefully.

Senator BLACK. In other words, if we do abandon the competitive regulation of prices in any code, you would then recognize the fact that the Government would have to step in in some way in order to protect the public from unfair practices?

Mr. GREEN. Oh, yes.

Senator BLACK. Either by regulation of profits or by some other method?

Mr. GREEN. Yes, sir; most decidedly so. I favor that.

Senator BLACK. And if we did not do that, then the public would have no regulation of prices, either by competition or otherwise, would it?

Mr. GREEN. No; we certainly could not throw the thing into the lap of those in private industry. This governmental planning, the governmental control provided for in the N. R. A., in my judgment, contemplates that very situation; that there must be Government supervision and Government control so as to protect the public against exploitation.

Senator BLACK. Then if I understand it, your evidence nowhere where you make the statement with reference to permitting codes agreements to fix prices in any way, that would necessarily carry with it that the Government had a corresponding duty in some manner to protect the public from unfair prices and unfair profits, large and excessive bonuses and salaries which dissipate the profits, and so forth.

Mr. GREEN. That is right. And that is one reason I favor the N. R. A., because it gives the Government a chance to protect the public against exploitation, against the appropriation of large profits to individuals and corporations.

Senator BLACK. The previous bill did not. Have you seen any bill that does?

Mr. GREEN. I have not seen any new N. R. A. bill.

Senator BLACK. One of the objections that some of us raised to the N. R. A. before was that it did permit abandoning fixing of prices by competition, and substituted no other method of regulating profits by exploitation of the public. It is your idea then that if this N. R. A. does give to industry the right to combine and fix prices, it has to go a step further and protect the public from unfair profits and dissipation of the business by unfair bonuses or salaries?

Mr. GREEN. Certainly. I do not think any labor man is against that.

Senator BARKLEY. In what way would you preserve under the codes or the law regulating the coal industry, the element of price competition?

Mr. GREEN. The code authorities, are, as I understand it, given authority to regulate the production and in a measure stabilize prices, but upon that code authority are Government representatives, and those Government representatives should be in a position to protect the public against exploitation.

Senator BARKLEY. You would not go far enough to say that you would advocate a dead level of prices so that nobody could compete as to the prices of their products? You would protect industry and small industry especially from cutthroat competition in the way of cut prices for the purpose of injuring a competitor or driving him out of business, and in that case you might have to fix some level, but you would not altogether eliminate from the consumer the opportunity to negotiate with the seller of coal or other regulated products as to the price that he should pay?

Mr. GREEN. Certainly not. There is not any intention to do that so far as I understand the main objectives of the N. R. A. It is predicated upon this theory, that industry cannot survive if it is going to engage in cutthroat competition, selling below cost, depleting its capital reserves and operating at a constant loss. No one expects an industry should operate upon that basis. The whole theory is that the code shall bottom industry, and that the price received from the products of this industry shall be sufficient to pay a decent wage, maintaining decent American conditions, and insure a reasonable fair profit to the owners of industry. That is my conception.

Senator HASTINGS. Mr. Green, in connection with the question asked by Senator Black, I had a letter from a manufacturer of fertilizer in Georgia, who was writing me, insisting that the codes shall continue and that this act shall be extended, and he said that prior to the codes their company was paying 4½ cents an hour to labor, that they had increased it under the code to 25 cents an hour, and their firm was making more money now than they did before the adoption of the code. Somebody of course was paying for the increased profit and the increased wages. I suppose that that was the public, as Senator Black suggested in his question?

Mr. GREEN. Well, Senator, that is only one example of many that you have referred to, where an industry was muddling along on a wage basis that was not sufficient to maintain a family even on a subsistence level. There were no profits—scarcely any, and in most instances none. I know that was true in many coal industries, because they were bankrupt when the N. R. A. became enacted into law, and it saved that industry.

The public does not expect an industry to be operated upon that basis. It is willing to pay a fair price for manufactured products, providing decent wages are paid and only decent profits are appropriated to the stockholders.

I presume that the instance to which you refer, where the company was operating perhaps at a loss, or had no profits at all, and through stabilization the wage level was lifted and his profits increased.

Senator HASTINGS. Or they operated against cutthroat competition.

Mr. GREEN. Cutthroat competition of the worse kind.

Senator BLACK. I have a letter, and I intended to bring it up, that does illustrate the point. As I recall it, the letter stated that they had been protected from competition in prices and had been able to

put their prices at such a level that they could make a profit. And the farmers of course are the ones that have to pay that profit. That raises the exact question that I mentioned a little while ago. If we are to give them the benefit of making agreements which raise the price to the general public, then it is your idea that, in order to limit it to a decent profit, the Government must do more than simply provide in its code that they can raise the price by agreement and must protect those firms and the public from indecent profits or depreciation.

Mr. GREEN. It is inconceivable that a government would create a stabilizing condition such as the N. R. A. and then turn industry loose and say, "Go as you please."

Senator BLACK. It has not yet made any effort whatever to curtail unreasonable profits. It has no authority under the bill, and it is your idea that a bill should give that authority?

Mr. GREEN. My own judgment is that the Government should be clothed with the power and the authority to prevent public exploitation.

Senator BLACK. I tried to get that in the previous bill.

Mr. GREEN. That is the principle embodied in the Guffey coal bill—governmental supervision and governmental control. I favor that same principle.

Senator KING. Would not your philosophy, Mr. Green, lead to a complete regimentation of all industry, including, of course, capital as well as labor?

Mr. GREEN. No, sir; I do not think so. I do not think the word "regimentation" fits into this N. R. A. scheme at all.

Senator KING. Would it lead to the corporative state, such as Mussolini has?

Mr. GREEN. No, sir; if I thought it did, I would be here opposing it.

Senator KING. Would it lead to the cartelization of industry, including labor, such as obtained in Germany under the Kaiser?

Mr. GREEN. I have not the least fear of that. This is a democracy, and we are working out our problems in a democratic way. I am satisfied to follow that policy and work it out in a democratic way, not under a Facist government or under any cartel arrangement such as you refer to.

The N. R. A. has also gone a long way toward the elimination of the intolerable sweatshop conditions which existed in many industries. It has made a beginning in the control of home work; it has outlawed some of the most vicious and harmful labor practices under which workers have suffered.

That has been a great evil. And under N. R. A., we are making progress in the elimination of home work where sweatshop conditions are approximated. We do not want to make the home a workshop, and we have been eliminating that, and it has been growing and growing and had become a recognized evil.

For example, in one industry, it has been customary to charge to the worker who was using a machine the cost of repairing any breakdown which might occur. That has been changed. The N. R. A. has brought about improvements in employer-employee relationships in many establishments and even in many entire industries.

We come now to the problem of the small enterprise. We hear again and again that the small enterprise is subjected to very serious abuses under the monopolistic practices which are permitted, if not

fostered, under the codes. That is the charge. We are also told that the small enterprises which do not have certain of the advantages enjoyed by larger companies cannot afford to make the improvements in conditions of employment that are required under the codes.

At the outset it is interesting to note that the "small enterprise" has not yet been clearly defined. Where is the dividing line to be drawn?

Senator COUZENS. Where do you think it ought to be drawn?

Mr. GREEN. I do not know of any dividing line. I think the small and the great should be covered by this economic rule.

We are all aware, however, that in certain industries small units have for many years carried on their business on the basis of drastic price cutting which was made possible only by sweatshop rates of pay. We know that the conditions which prevailed in this country after 1929 encouraged the establishment of such units. We recognize, on the other hand, that in certain lines of activity there is an undisputed place for the small unit, and it must be protected from the detrimental practices of the larger companies.

Our accomplishments since the summer of 1933 mark the beginning of a great development. But if we are to succeed, no undermining of this base can be tolerated. Our whole structure must not be jeopardized through the subminimum standards of a very small minority of enterprises whose economic existence is not justified.

In considering the problem of a small enterprise we should take full cognizance of the fact that not all larger units have advantages and operating economies over the smaller units. I think that is a fact. In a large number of cases the smaller unit is not at a disadvantage but actually has certain real advantages over the larger competitor. This point is clearly illustrated in the Dun & Bradstreet Retail Trade Survey for the year 1933. I am not commenting here on the effects of the codes in these establishments, because this information is not yet available, but I do want to bring to your attention some of the results which were brought out by the studies to which I refer.

In the absence of any clear definition as to what constitutes the small enterprise, we have broken down these figures in two classifications: Retail outlets with annual sales of $10,000 per year or under and retail outlets with annual sales over $10,000 up to and including $100,000. From these figures of concerns reporting profits, there would seem to be a direct connection between the relatively high profits which are shown by certain smaller units and their relatively low-wage costs. For example, the study of bakeries shows that in the small units the percent which profits constituted of net sales was twice that of the larger units, and the percent which wages constituted of net sales was less than one-half of the figure for the larger units.

Senator KING. What period was that, Mr. Green?

Mr. GREEN. That was Dun & Bradstreet for 1933.

Senator KING. You have no figures for the predepression period—say, for instance, from 1923 to 1929? I do not want to disturb the continuity of your presentation, but if you have that, I should like to have those figures.

Mr. GREEN. I do not believe that I have incorporated them here, but of course I will get them for you, Senator.

The Dun & Bradstreet "Retail Survey" which was made in 1933, was the first of its kind. There are, therefore, no comparable figures available for the predepression years.

In the case of the 5-and-10-cent stores, the percentage of profits for the smaller units was 60 percent above that for the larger units, while the percentage of costs represented by wages was approximately only one-third. The small enterprise in the photography field showed profits three times as high as those for large units, while wage costs on a percentage basis were only approximately one-half for those of the larger units.

These brief examples clearly show that there is no foundation to any general statement that the small enterprise is operating at a disadvantage and must receive special consideration. On the contrary, these examples conclusively prove that in many cases the small enterprises show more favorable earnings than the larger units and that these more favorable earnings are largely due to the lower costs of labor that prevail.

Senator HASTINGS. You are talking about those doing a $10,000 business. Is not a great deal of the matter of labor in that case due to the man that is operating that business himself, and are his wages taken into consideration in those figures?

Mr. GREEN. Yes. We have taken the wages into consideration of those plants producing under $10,000 and those over $10,000. It is a matter of fact that those who produce $10,000 or less employ less labor, but they employ some labor.

Senator HASTINGS. I had in mind a man doing a $10,000 business must perform the greater part of the labor himself?

Mr. GREEN. I am not in a position to say that. It all depends upon the character of the business; but it is reasonable to conclude that a man doing a $10,000 business, even if he did a large part of it himself, must employ some labor. My report here is based upon the facts as we developed them in connection with that matter.

Senator KING. Were they $10,000 sales or cost of operation?

Mr. GREEN. $10,000 sales. They were retail outlets with annual sales of $10,000 per year or under and retail outlets with annual sales over $10,000 up to and including $100,000. Those were the firms covered in those figures.

One of the chief complaints against the N. R. A. is its failure to achieve full compliance with code provisions. I believe that most employers have observed code provisions covering hours, wages, and general working conditions. Of course, there are many employers who have not—who have resorted to every kind of trickery to evade their responsibilities under the recovery program, while they took advantage of that program for their own benefit. There will always be a lawless minority, no matter what the law may be. We knew this would be so when the law was adopted. Those lawless few can and will be brought into line. President Roosevelt in his talk to the code authorities gathered in Washington a year ago this month, said, in this regard:

> It is * * * common sense for the consuming public in their own interests as well as for labor and for industry, to join in seeing to it that the few who think only of selfish gain be made to play the game with the overwhelming majority.

He described the same condition when last June he said, in talking of the recovery program:

> It is well for us to remember that humanity is a long way from being perfect and that a selfish minority in every act of life * * * will always continue to think of themselves first and their fellow beings second.

A very profound truth.

These statements of President Roosevelt apply not only to the field of compliance with code provisions, but to support of the entire recovery program. I do not believe that the majority of employers are willing to see the N. R. A. scrapped. I know that labor is not. It would vigorously oppose it. There is again a willful and selfish minority opposed to regulation for the common good. They are still inspired by the law of the jungle, the survival of the fittest—"me and my wife and say no more; I care nothing for the others." They say "Even though my acts may be demoralizing, it makes no difference."

We cannot tolerate that because it pulls down the standard set.

It is they who are attempting to end the experiment upon which we embarked 2 years ago.

We cannot surrender to them. No matter from what appeal, sentimental or otherwise, or how they attempt to play upon our emotions, the facts are that our judgment must prevail. We cannot permit the welfare of humanity, of the common good, and the public interest, to be surrendered.

Compliance with code provisions can be secured. The best means of securing that compliance is through self-organization of the workers.

If they would leave us to organize, if we could make section 7 (a) a vital, living, active thing, we will bring about compliance. Labor will see to that.

As soon as workers are really free to organize they will see to it that unscrupulous employers do not take unfair advantage either of their employees or of their competitors, through unfair labor practices.

Of course, the N. R. A. has not met with the approval of all groups or of all individuals. Of course, there are people who have been forced to do things they did not want to do because of the N. R. A. Business has improved to such a point that some employers are now anxious to go ahead without the necessary cooperation with Government or the necessary protection for labor. What 2 years ago was looked upon as Government assistance in getting business out of a very tight place has now become the unwarranted interference of Government in business. So many business men want to do away with the N. R. A. and go back to the old system. We can never go back. We must have an agency which is designed to bring order into our industrial life. We must build up the experience of the past 2 years, if we are to achieve economic balance. We can no more hope for automatic recovery now than we could in March 1933. It is impossible. We cannot forget that we still have 11,000,000 unemployed and that a return to normal functioning of our economic system cannot be expected until the conditions which created that unemployment are corrected. Nor do we want to return to the predepression days of ruthless competition in every phase of our industrial life. We cannot go back to savagery.

It would seem to me in all fairness that if there is any group in the industrial life of this Nation which might with justification feel that the N. R. A. has been a failure, it would be labor.

We have been disappointed, not because the fundamental principles of N. R. A. were unsound but because of errors in its administration. But we distinguish between that which is fundamental and that which is administrative. We have not received all we hoped for, but if we

would yield to our feeling, we would be here appealing to you to repeal it and punish industry, but we are not doing that.

The collective-bargaining portions of the act have not been enforced; minimum wages established in the codes are too low; the hours fixed in the codes have been too long to reabsorb into industry all the millions of unemployed whom we hoped to see reemployed and the wage rates fixed have not been adequate. Labor has not been given the place in the determination of code provisions nor in the administration of those provisions which it had every right to expect, and which it did indeed expect. We have demanded again and again that labor must be given representation upon every code authority which is constituted under the N. R. A.

If we had been given representation upon code authorities, many of the complaints against N. R. A. would never have been made, because labor would have made its contribution.

Senator COUZENS. Who is responsible for that condition that you complain of?

Mr. GREEN. The administration of the National Recovery Act. I do not mean the President, but the administrators of the National Recovery Act.

We have demanded that labor be equally represented with industry upon every board set up to administer the N. R. A. We still urge equal representation; we still urge a very significant shortening of the week, and an increase in minimum rates of pay, absorb the unemployed, and build up buying power.

We urge that the collective bargaining provisions of the act be strengthened and clarified by legislation. All the changes which we urge, however, let me point out, are predicated upon the continuation of the N. R. A.

In December of last year, I summarized the recommendations of labor with regard to the N. R. A., as follows:

1. That section 7 (a) which provides for collective bargaining, be retained, and that it become the law of the land without regard to whether or not it may be incorporated in industrial codes of fair practice.

That it be a part of the fixed policy of the Nation. Let us make real and vital and declaration of public policy which Congress incorporated in the Norris-LaGuardia Act, and what we can do about making section 7 (a) the law of the land.

2. That provisions for the regulation of child labor, the establishment of minimum rates of pay and maximum hours be retained.

3. That provision for the elimination of unfair trade practices be made.

4. That the new N. R. A. be broadened in its scope, so as to provide for appropriate labor representation upon all code authorities and equal representation with industry in the administration of the National Recovery Act.

I shall not today attempt any discussion of the changes which labor would like to see in the N. R. A. When a new N. R. A. bill is submitted, I shall hope for an opportuntiy to make specific recommendations as to the form the law should take.

There is, however, one proposed change of such great importance that I must call it to your attention. It has been proposed before your committee that certain codes be dropped from the N. R. A.

and some millions of workers be left without any protection. That should not be. I cannot be too emphatic in my statement that the N. R. A. must cover all workers.

I therefore disagree with the recommendations made by some distinguished representatives who have come before your committee. I think the coding process should be broadened so as to bottom industry completely, and thus protect those who are helpless and cannot protect themselves so far as minimum rates of pay are concerned and maximum hours of employment. Prevent the pendulum from swinging back to the old long hours and low minimum rates of pay.

Senator KING. I want to ask you, Mr. Green, whether your plan contemplates the prevention of any man from getting work unless he is a member of the Federation of Labor or of unions or of union labor. Would it be a compulsory closed shop?

Mr. GREEN. No, sir. I do not contemplate that, and I do not know wherever you got that impression.

Senator KING. I was asking whether that is your view.

Mr. GREEN. You must have had a little impression; and that is not my view.

Senator KING. I did have that impression from some—not you——

Mr. GREEN (interrupting). All we want is to give the right to the workers to organize. If they choose to come to the union, let them have it. If they choose an independent union, let them have that. If they choose the American Federation of Labor, let them have it. They are entitled to that.

Senator KING. I agree with you, and if I were a laboring man I would become a member of the American Federation of Labor.

Mr. GREEN. I would like to have you as a member of the United Mine Workers of America. [laughter].

Senator COUZENS. While you are on that point, why is it that unionism has not progressed further in this country than it has?

Mr. GREEN. There is no movement in America, my dear Senator, that is opposed so viciously and so ruthlessly as the American labor movement. That is the answer. It is because these employers have said, "Thou shalt not."

Here is a case: In the Firestone Tire & Rubber Co. and the Goodrich Tire & Rubber Co., the workers accepted section 7 (a) as real and vital, and a large number of them organized. They have never done that before under the N. R. A. They were afraid. But they organized. When they organized, they asked that they be permitted to engage in collective bargaining with the company. The company said, "We are bargaining with our representatives of our employees' association", which was the company union established by them, financed by them, fostered by them, and protected by them. They said, "All right; they do not represent the workers." The company said, "They do." There was the usual situation. So they came before the National Labor Relations Board, set up under Public Resolution 44, passed by the Congress of the United States. And there was an appeal to that Board to determine this issue. How? Through an election held at the plant under Government supervision. Well, the Board said, "That is a fair request. You have asked that it be determined democratically. If they want the company union, if the majority of them want the company union, all right. If the

majority of them want the independent union, they ought to be given the privilege to say so." And the Board ordered the election.

When the representative of the Board made that known to the company, the company said, "No; you won't. There will be no election here."

Why was there not an election? What were they afraid of?

Now, those cases are hanging in the courts, and we can not even hold an election to see whether the workers want the American Federation of Labor or the company union.

The same thing in the Houde case. The same in the McDonald case. The Steel Corporation has said "no", the rubber barons have said "no", and the automobile manufacturers have said "no." There is the answer, Senator.

Senator COUZENS. Didn't the automobile people have any election?

Mr. GREEN. No, sir. They have been pretending to hold some elections, but not under Public Resolution 44. There is the answer.

Senator COUZENS. Under what form did they hold it?

Mr. GREEN. Under this company union board that is functioning up there known as the "Wolman Board." That is a company union board. Whenever you see the company clinging tenaciously to a board and praising it, you know that it is their instrumentality. And they praise that board and damn the National Labor Relations Board. There are between 2,000,000 and 3,000,000 men and women employed in the so-called "service trades." They are among the most exploited and poorly paid groups of workers in this entire country.

Just imagine what the chambermaid in a hotel could do in order to correct a grievance. And there are thousands of them. And bell boys.

I say now that labor will never willingly see them denied the protection given to all other workers and will oppose with all the force at its command any attempt to limit the N. R. A. in such a way that these millions of men and women will be without any regulation as to their wages, hours, and working conditions.

Let us bottom them. Let us protect them to that extent.

Senator KING. Mr. Green, may I ask you a question there?

Mr. GREEN. Yes.

Senator KING. Some of the States have rather strict laws relating to labor and fixing hours of labor. Has your organization addressed itself to State legislatures and to the people of the State with a view to securing such legislation that would deal with purely intrastate industries?

Mr. GREEN. Yes. I am glad you brought that point up, Senator. We have, and we have secured the enactment of minimum wage laws in some of the more progressive States. We have secured the enactment of legislation limiting the hours of working women in a number of progressive States. We have secured the enactment of State N. R. A. legislation in a number of States. I had the things in my mind. I think it runs more than it does in the States that have passed N. R. A. laws patterned after the National Recovery Act.

Senator COUZENS. Utah did yesterday, did it not?

Mr. GREEN. I think so.

Senator KING. May I say that for years I labored to secure restriction of hours in my State, and what I have felt, and feel now, is that your organization, and labor generally, could get many of these meas-

ures of relief which they are asking for and which they ought to have, through the State legislatures where the matters relate to purely intrastate matters, so that you do not have the conflict between the National Government and the States themselves.

Mr. GREEN. We have succeeded admirably, Senator, in a number of progressive States, but, listen: There are some States that are, where the employer control is so perfect that it is hopeless, and there is no chance.

Senator KING. Let me make this suggestion. Reforms are rather slow——

Mr. GREEN (interrupting). Would you be surprised if I tell you that there are still four States where there are no workmen's compensation laws?

Senator KING. No; because it has only been since Ohio inaugurated that system 25 years ago——

Mr. GREEN (interrupting). Isn't that a good while?

Senator KING. Yes; but I was going to say that the States have been moving forward just like this with every reform.

Mr. GREEN. Let me show you the competitive disadvantage which a State is put at where it enacts progressive legislation and establishes decent minimum rates, with States where there is no legislation of that kind. Your manufacturers in Utah—if there are any there—I know there are mining manufactures there, but I do not think Utah is a great manufacturing State, is it?

Senator KING. We have some.

Mr. GREEN. If in Utah the legislature establishes fairly decent minimum rates of pay and shortening of hours, and Colorado just simply works as long as they please, how can Utah compete with Colorado?

This is a matter of universality. The whole thing depends upon the competitive relationship between one section of the country and another, and the exploited worker in the South is entitled to as much protection by this Federal Government as the exploited worker in the more enlightened States, and that is the reason why we feel at least—[Laughter.] I will change that to "progressive States." I will change that, if you please, to "progressive States."

What we are trying to do is to establish a national basis upon which you can stand and upon which we can build our national economic structure, because there are some things that are clothed with national implications rather than State implications.

It is squarely up to the Federal Government to chart the course which is to be followed. The formation of policy must be centralized under the National Recovery Administration. It is not my province to discuss the legal basis for the protection of these workers. It is my firm conviction, however, that some method can and must be found whereby they shall be covered by codes.

I am receiving many statements from unions and from individual workers all over the country, to the effect that the N. R. A. must be continued for at least 2 years more, in order that we may know what kind of a permanent organization we must build. This is reasonable, isn't it? We have been experimenting for a short period of time. We want to find what is the virtue of this experimental legislation. What are its faults? What are its weaknesses? We cannot find out in 1 year or a year and a half, but perhaps we will know more about it within the next 2 years.

As one expression of the workers' desire for a continuation of the N. R. A., let me read to you an extract from a letter which I received recently [reading:]

At the regular meeting of the Central Trades and Labor Council of Greater New York and vicinity, held on March 21, 1935, the delegates assembled voted unanimously that the National Industrial Recovery Act be continued and extended for a period of at least 2 years or more and that its provisions be amended to conform with the recommendations as enunciated by the American Federation of Labor * * * and I have been authorized and instructed to convey to you that our central body favors the extension of the National Industrial Recovery Act.

This represents the sentiment of the workers in that great metropolis of New York.

That is a sample. I have received numerous letters of this kind from organized workers all over the country.

No one would urge tearing down the foundations of a great bridge or dam on the theory that it should be destroyed because it was not yet a completed structure. Yet, there are those who urge that a great social and economic experiment be scrapped because it has not reached completion in the short space of 2 years. Labor is not so impatient. Labor recognizes that social progress is a slow and unending task and that no worthwhile venture should be abandoned until there has been every opportunity for a thorough trial.

I base my earnest recommendation to this committee upon that statement, that N. R. A. has proved its virtue and its soundness. We have experimented in the governmental laboratory with N. R. A. More than 2 million men have been put back to work as the result of reduction in the hours of labor, and I recommend upon the basis of the statement I have just made in behalf of labor, that N. R. A. be extended for a period of 2 years.

The CHAIRMAN. The committee thanks you, Mr. Green. The committee is going to meet this afternoon at 2 o'clock in the District of Columbia Committee room in the Capitol. Mr. Blaisdell will finish his testimony at that time. The committee will now go into executive session.

Senator HASTINGS. I would like to have this letter printed in the record following Mr. Green's testimony.

(The letter is as follows:)

WILLIAMSPORT, PA., *February 4, 1935.*

Hon. ROBERT RICH,
Washington, D. C.

HONORABLE SIR: The N. R. A. has been bothering and threatening our firm. We had 4 men whom we kept all through the depression, not because we needed them, but because we did not let any of our men go, but kept these 4 men working on odd jobs of all kinds, any kind of work that we could make for them, pipe fitting, heating, mowing lawns, repair work on my properties, or anything just to keep them busy. Their pay was from 55 cents per hour to 68 cents. We even had them digging ditches. They were the most inefficient men we had on our list. When the code went into effect saying that we must pay our men $1.20 per hour these men complained to the code authorities that they wanted $1.20 per hour back pay for 2 months. This rate is 20 cents higher than was ever paid in this city at any time. These rates are all out of reason. People are not able to pay that rate in this locality.

One of these who made the complaint is a boy who just completed his apprenticeship. Another is a man about 24 years, with no family, and who is no good as a workman whatever. The third is an Italian boy who learned his trade with us, and who has since gone into business for himself, and we feel sure that he is not charging code prices. The fourth man is one who has been working for us

for 10 years, and changed his mind just as soon as he made the complaint against us.

We employ about 18 married men with families, working steady through the whole depression, giving them any kind of work that I could scrape up, just so that they would not have to go on the relief.

Since 1929 I have worked every day from 10 to 15 hours, and have had to borrow $10,000 to keep from being sold out, and we have a Government home-loan mortgage of $11,212 on our home, the largest in the county.

The N. R. A. has stopped me buying direct from manufacturers, which I have been doing in the past. This puts Sears, Roebuck in a position to sell cheaper than I can buy. As an example, Sears, Roebuck sells radiation for 27 cents per foot, and we have to pay 28 cents a foot through our jobbers. Before the N. R. A. we bought radiation 4 to 6 cents a foot less than Sears, Roebuck was selling for. They pay their plumbers about 50 cents per hour.

The Pennsylvania Power & Light Co. pay their men about 55 to 60 cents per hour. They will repipe your hot-water line in the cellar with copper piping for $7 a lump sum. This is between $20 and $40 below anyone's actual cost.

We have had one new house built in Williamsport this year. The Williamsport school board is building a unit to the high school. The R. W. D. is doing the work, which should have gone to the plumbers, and they are only paying 75 cents per hour to plumbers, and we are expected to pay our plumber $1.20 per hour. Is there anything fair in this?

Well, I will be glad to send the keys to my home and plumbing business and maybe I can get a job from the Government.

Respectfully yours,

KARL PLANKENHORN.

(Whereupon, at 11:30 a. m., a recess was taken until 2 p. m., of the same day, as noted.)

AFTER RECESS

(The hearing was resumed at 2 p. m., at the District of Columbia Committee room of the Capitol.)

The CHAIRMAN. Dr. Blaisdell, you may proceed, resuming where you left off in your testimony the other day.

STATEMENT OF THOMAS C. BLAISDELL, JR.—Resumed

Mr. BLAISDELL. Senator, I believe Mr. Green testified this morning. I was not present at the hearing, but in view of the fact that a number of the Senators yesterday indicated an interest in the attitude which the Consumers' Advisory Board under the N. R. A. has taken on labor questions, I feel that it would be wise to read for the record two paragraphs in a statement which I submitted at a public hearing on January 30 before the National Recovery Board [reading]:

> Labor, we repeat, has much the same interest as does the consumer in the consequences of the codes. If the codes advance prices faster than they advance wages, living standards will fall, volume of output will decline. Employment will be reduced. The nominal wage gain will be more than canceled by the loss of jobs and the rise of prices.
>
> We do not believe that better wages need so to defeat themselves. The crux of the matter lies in the relationship between wages and costs. Employers have frequently asserted that higher wages spell higher costs. If they do, and if these higher costs are passed on in higher prices, there is danger that consumption and employment will suffer. But they need not have this result. If management and labor will unite to eliminate wastes, improve processes, standardize products, cut overhead, turn out increasing quantities of goods and sell them at prices which the people can pay, costs will fall as wages rise, and decent wage scales will be no bar to decent living.

The CHAIRMAN. That is a very good statement.

Mr. BLAISDELL. I was speaking of the policies of the Consumers' Advisory Board having their authority within the act itself. I

referred specifically to the attitude of the Board toward code provisions which have an effect of regulating prices. That this position properly interpreted the act seems clear from the statements of Senator Wagner during the debates on the bill. I quote from Senator Wagner's statements during that debate [reading]:

Mr. WAGNER. I have reiterated on the floor two or three times, and it was stated any number of times in the committee that it is not contemplated that prices shall be fixed, because the fixation of prices is not in conformity with the preservation of fair competition. I made that as clear as I could and still there is constant reiteration. I do not think we ought to set up a straw man here and then knock him down.

Mr. BORAH. I think the reiteration arises out of the fact that it is difficult for some of us to see how we are to control the question of wages without controlling the question of prices.

Mr. WAGNER. We can provide that the sales shall not be at prices below the cost of production, but as to what that cost of production is depends on the efficiency of each particular plant, and we cannot have one fixed price.

Mr. HASTINGS. Mr. President, I want to ask the Senator from New York a question.

Mr. LONG. I yield.

Mr. HASTINGS. I want to find out whether there is anything in the bill which would prevent the fixing of prices.

Mr. WAGNER. Yes; because we are providing a code of fair competition and providing for practices of fair competition and against practices which bring about unfair competition. That is also well known in the law. The Senator from Idaho yesterday was anxious to have that specifically defined. We do not define it in the antitrust laws. We do not define it in the Federal Trade Commission Act. We simply use the words "unfair competition". We do not define it in the Tariff Commission Act.

Mr. HASTINGS. Is there any objection to writing in a statement that fair competition shall not include an agreement with respect to prices?

Mr. WAGNER. I have no objection to that.

(Excerpt from the Congressional Record of June 8, 1933, pp. 5379–5380 (daily).)

The CHAIRMAN. May I ask if Senator Borah made any observation at that time?

Mr. BLAISDELL. Senator, I simply took that quotation from the Record. I have not the further statement.

The CHAIRMAN. I thought that in observing the Record, that at the time that occurred Senator Borah made some observation. Very well, proceed.

Mr. BLAISDELL. Before submitting to your committee some of the materials which have indicated to the Consumers' Advisory Board the detrimental effects of some code provisions, I wish to suggest certain directions which any continuation of the National Industrial Recovery Act should take.

First, the attitude of the Congress toward price-regulatory devices should be clarified. The act might well prohibit not only monopolistic practices but trade practices which have the effect of collusive action between members of an industry against the public interest. In cases where any control is established over prices or production, that control should be vested in the public hands.

The CHAIRMAN. I am wondering, Doctor, if you could furnish for the information of the committee, a draft of just how you think the wording of that provision should be.

Mr. BLAIDSELL. I shall be very happy to, Senator.

The CHAIRMAN. Because that has been one of the troublesome propositions.

Mr. BLAISDELL. I have one further suggestion a little further on, on that specific line.

Second, any revision should provide definitely for the character of code authorities. Since code provisions affect not only the owners and managers of industry, but also labor and the consuming public, adequate provision should be made for the representation of labor and the consumers' interest on code authorities. This should include provisions for the proper financing of such representation.

Third, to provide for the protection of the consuming public, Congress might well clarify the concept of unfair competition. Unfairness in competition has been interpreted as meaning unfairness to trade competitors. I suggest that competition which is unfair to the consuming public is equally unfair competition and should be so defined. The present act declares as one of its purposes "to eliminate unfair competitive practices." I suggest that this section should read "to eliminate competitive or monopolistic practices which are unfair to the members of the industry, labor, or consumers."

In that connection, it might be well to refer to decisions which have been handed down in the courts, indicating that unfair competition or unfair methods of competition are not unfair because of their effect upon the consumer. They are unfair because of those upon their competitors.

The CHAIRMAN. Are you a lawyer?

Mr. BLAISDELL. I am not, Senator.

The CHAIRMAN. You talk as though you were.

Mr. BLAISDELL. It has been a part of my job to try to understand some of the decisions of the courts.

The CHAIRMAN. That is probably because you are not a lawyer. [Laughter.]

Senator BLACK. If that amendment you suggested should be adopted, would that not result in preventing any kind of an agreement of any type which would tend to raise prices or hold prices up?

Mr. BLAISDELL. That would be my interpretation, Senator. I should hope that that would be the effect.

Senator BLACK. It would be slightly inconsistent with the bill as it is now written, would it not?

Mr. BLAISDELL. I think it would be clarifying, Senator.

Senator CONNALLY. Under your set-up, the consumer would be in the minority still, of course, on the board, with labor and the employers? You said you wanted representation by labor and by the industry and by the consumer, is that right?

Mr. BLAISDELL. Yes, sir.

Senator CONNALLY. I say, the consumer would still be in the minority, so that the situation that Senator Black suggested——

Mr. BLAISDELL (interrupting). As far as counting noses would be concerned; yes. I would believe that the same restrictions which are on the present code authorities, that is, that the public authority as expressed in the National Recovery Administration would still be supreme over any code authority.

I wish to indicate the nature of the problem which we are facing. Concentration of control in American industry is nothing new. In spite of the antitrust acts, this concentration has proceeded apace. Roughly, American economic organization can be divided into four classes: First, the section in which competition still plays a large part; second, a section in which competition has seemed to function in a way socially undesirable.

I will be a little more specific there as to what I mean. I think it is perfectly clear that industries, such as the coal industry—bituminous coal, I am referring to—the oil industry, and the lumber industry, have proceeded on the basis of competitive exploitation of natural resources. At times the tax laws of the various States have contributed to that situation. A number of things have contributed to it, but it is a competitive system which seems, in my judgment, to have led to very serious evils.

There is an overexpansion of the coal industry where it is unable to employ a number of men who are kept around any place near what would be called full working time. Some time ago when I examined the figures, if my memory serves me correctly, we had about three times the number of workers in the industry that we needed. Continuous competitive opening of new outlets creates a situation not desirable, I believe.

Third, the section in which monopoly has been legalized and subjected to public regulation. Fourth, a section which is essentially monopolistic, but which does not come within the prohibitions of the antitrust laws.

The first section obviously needs little regulation. If codes are to be limited to minimum wages and maximum hours and a few very simple provisions which we all recognize as morally unjustified practices, that would be all that was necessary.

Senator KING. Are those some of the practices that have been denounced by the Federal Trade Commission?

Mr. BLAISDELL. I have reference, Senator, specifically to those.

Senator KING. Are they rather comprehensive in the placing in the category of practices which are hostile to good ethics and good morals?

Mr. BLAISDELL. They are very specific, Senator.

Senator KING. Have you any suggestions to make which would supplement those?

Mr. BLAISDELL. You mean additional practices?

Senator KING. Yes.

Mr. BLAISDELL. Off-hand, no.

Senator KING. Later, at the conclusion of your testimony, if you care to submit any, we shall be glad to receive them.

Senator CONNALLY. Doctor, may I ask you a question there?

Mr. BLAISDELL. Certainly.

Senator CONNALLY. Did I understand your last statement to mean that if N. R. A. were restricted in its activities to minimum hours and wages and child labor and a few of the admittedly objectionable practices in industry, that that would be as far as it ought to go?

Mr. BLAISDELL. That would be my feeling as far as this section is concerned.

Senator CONNALLY. This section?

Mr. BLAISDELL. Yes.

Senator CONNALLY. Not the whole thing?

Mr. BLAISDELL. No; I was talking about this particular group, the great majority of our distributing trades, although even there there may be a few instances where it may be desirable to interfere.

A number of the States have felt very keenly about the development of chain stores and that type of thing, because they felt they were hampering the small man.

Senator CONNALLY. What would you think of a plan something like this, something to embody what you have just said, and instead of having the code of "must", having the code of "must not"—"You cannot do this and you cannot do the other", and do away with all of this heavy overhead machinery of detailed codes, and turn it over to the Federal Trade Commission or some other agency to see that industry does not do these things that are prohibited. Would that not simplify it a great deal?

Mr. BLAISDELL. I would much prefer a set-up of that type, Senator, to a great deal of the regulation that industry has imposed upon itself in some of the codes.

Senator CONNALLY. There are seven or eight hundred codes. It occurred to me that it would be much simpler to select definitely the objectionable things in the industrial set-up and say, "You cannot do these things", and then if somebody did—we would have somebody to watch them to see that they did not do that, and provide if necessary the Federal Trade Commission or whatever organization carries it out, a summary method of acting, rather than to wait on a court decision for 2 or 3 years. Have some summary practices by which they could be forced to desist.

Mr. BLAISDELL. Senator, our board, the Consumers Advisory Board, has given considerable thought to that specific question. I think I can answer it best by again reading two paragraphs here from the statement which we made to the National Recovery Board as of January 7, 1935.

These are specific recommendations [reading:]

First, that the Government retain the right to impose codes of fair competition as a measure of industrial control;

Second, that the vast majority of these codes be confined to the establishment of simple minimum standards governing hours, wages, child labor, collective bargaining, and fair-trade practices;

Third, that there be added to these standards, comparable quality standards for the protection of the consumers;

Fourth, that definite limits be set on such price and quantity controls as may be permitted to code authorities in exceptional cases;

Fifth, that public membership of code authorities be made proportionate to the powers which they exercise;

Sixth, that the tariff section of the act be repealed; and

Seventh, that provision be made for the collection of complete industrial statistics.

Whether the policy embodied in these recommendations should be written explicitly into the law is for Congress itself to decide. In the main it might be carried out in the administration of the act without specifically amending its terms. These proposals do not constitute a complete program of public control. They are presented, rather, as minimum requirements which should be met even if Congress confined itself to a brief emergency extension of the act. A continuance of the Recovery Act as an emergency measure, however, will merely postpone issues which must sooner or later be faced.

The rest of it deals with certain other provisions that I will deal with a little bit later.

An important matter in connection with the wages and hours provisions, even in their simplest forms, is probably flexibility. There is a certain amount of flexibility which is probably essential.

Senator CONNALLY. What I had in mind was that we are all agreed practically on hours of labor and wages and so forth, but under the present set-up you are just giving to the industry that wants to gouge the consumer a fine excuse for doing it by saying that because of the

wages and because of hours, and that sort of thing, they can make the consumer pay. So that if you should strive for those things and leave everything else more or less competitive, would you not get the best results for the whole effort?

Mr. BLAISDELL. Senator, I am afraid that we could not leave it more or less competitive because it just is not competitive.

Senator CONNALLY. It was before, was it not?

Mr. BLAISDELL. I am afraid not.

Senator CONNALLY. Because of trusts and monopolies?

Mr. BLAISDELL. There are considerable sectors that even with the antitrust laws we had, nevertheless, developed a considerable degree of monopoly in industry, which does not seem to be prohibited by the antitrust laws.

Senator CONNALLY. You would still find that under your set-up or under the N. R. A. that you have not destroyed it. It is still there. What I say here is that the N. R. A. is giving them more power than they had before, by legalizing and sanctioning the things that it has been doing.

Mr. BLAISDELL. Our suggestion in that connection is that wherever those controls have existed, they should be supplanted by public control.

Senator CONNALLY. That is a pretty general statement.

Mr. BLAISDELL. I think that you will probably want to ask more questions along that line as I go a little bit further.

Senator KING. May I interrupt you there?

Mr. BLAISDELL. Certainly, Senator.

Senator KING. If the Sherman antitrust law and the Clayton Act and the provisions of the Wilson bill—the old tariff bill, if you remember—had been enforced as interpreted by the courts when those measures were passed, do you not think that there would have been better control if not a complete control of monopoly in the industrial life of our country; in other words, was not the development of monopolistic control in industry largely the result of a failure to enforce those laws as those laws had been interpreted by the legislators?

Mr. BLAISDELL. Senator, you are asking me to distinguish between the intention of the legislators and the intention as they have been interpreted in the rulings of the Supreme Court?

Senator KING. Probably my question would imply that, but supposing there had not been the interpolation into the law of the words "unreasonable restraint of trade", what do you say then? I mean judicial legislation. Probably that is an unfair question.

Mr. BLAISDELL. Senator, if you will pardon me for seeming facetious, I wonder if that is not saying that if they do not become monopolistic, they would not have become monopolistic?

Senator KING. Well, hardly that, but, as you know, if you take the debates at the time the Sherman Act and the Clayton Act were passed, it was very clearly the intention of the legislators to prohibit monopoly in industry, and I am wondering if you believe that those laws ought to be strengthened in the light of the interpretation which has been placed upon them from time to time by the Supreme Court?

Mr. BLAISDELL. That runs pretty deep into what we think American life ought to develop, Senator, and personally I would very much like to see a strengthening of the competitive forces. I feel that that is not a very satisfactory answer, but it perhaps indicates my thinking on it.

Senator BLACK. Do you believe that these codes have tended to increase monopoly or reduce monopoly?

Mr. BLAISDELL. Senator, as a general proposition, it is very difficult to answer that question. I think in a great many cases they have probably tended to strengthen monopolistic practices. I think that that is not true of all, by any means.

I think that there may be a great many mitigating circumstances. I feel that there has been a great deal of experience gained in the last months under which the act has been operating. I think that probably today the Administration—it is the National Recovery Administration that I refer to—is in better position to deal with these practices than probably any other group of men. They have been closer to the actual factual situations than probably anyone else in the country.

Senator KING. You mean by that that they have learned those that are monopolistic and those that are not? They know a little more?

Mr. BLAISDELL. I think they know a great deal more.

Senator KING. And being better able to deal with them merely because of their superior knowledge of monopoly if monopoly exists?

Mr. BLAISDELL. I am inclined to think that we have got to deal with monopoly in terms of the particular monopolistic practices as we come to know them. The Federal Trade Commission has made the suggestions to the Congress from time to time in its various reports. Its last annual report, if my memory serves me correctly, made some very specific suggestions along that line in regard to the transfer of assets as well as stock control. My feeling is that that is a step in the right direction.

Senator KING. May I say that I have prepared a bill prohibiting that and making that monopolistic practice?

Senator BLACK. Has not your department as representing the consumers simply been fighting a vain battle so long as there were agreements which could hold up prices? Your object was to keep prices down?

Mr. BLAISDELL. Yes, sir.

Senator BLACK. Did you succeed in keeping any down?

Mr. BLAISDELL. I think, Senator, that the influence of this particular group of individuals has been an increasingly strong influence. In the early days of the N. R. A., in the hurly-burly and what not of those months, the protests of the Consumers' Advisory Board, through faulty machinery, and what not, were not listened to. I would say that particularly within the last 6 months there has been an increasing tendency toward a recognition of these very principles that I have been talking of here and the principles which were intended should be advanced under the National Recovery Act.

Senator BLACK. Did you succeed in preventing the agreements to reduce production of things that people actually needed all over the country? I am not talking now of the things that you say there was too much of, like coal—perhaps there was too much, although I rather doubt it, because I heard of a lot of people who were cold—but of the things which your department knew that people needed, did your department succeed in having them prohibit the limitation of production?

Mr. BLAISDELL. I answer that "yes" most decidedly.

Senator BLACK. Practically all of the codes do contain provisions which tend to limit production, do they not?

Mr. BLAISDELL. There are some codes—a small number of codes—that contain specific provisions of that kind. There are a much larger number, in my judgment, that have that effect.

Senator BLACK. Well, they all have that effect of limiting the time that the factory shall run, do they not?

Mr. BLAISDELL. There are very few, I think, with those provisions.

Senator BLACK. Have they not tried a number of people in the country for producing more than they were supposed to produce under the codes?

Mr. BLAISDELL. I think there are gentlemen here who are better able to answer that question than I, Senator.

Senator BLACK. I want to mention an instance which I saw reported yesterday. Did you find in your study of consumption over the country that there were too many ladies' hose in the Nation?

Senator CONNALLY. That is a personal question. [Laughter.]

Senator KING. We will treat it impersonally.

Senator BLACK. I mention that because I saw where a man was fined $1,000 a few days ago for manufacturing too many; and I am interested in whether you found there were too many ladies' hose in the country, provided everybody could have all they needed?

Mr. BLAISDELL. I think that the record, as far as our practice is concerned on that particular question, would be that we have opposed that type of provision at every point.

Senator CLARK. Did you oppose it successfully?

Mr. BLAISDELL. Senator Clark, I think I answered the question previously to indicate that we had been overruled in a great many cases.

Senator BLACK. There is no better way to raise prices, even though they were to meet and agree to it, than to agree that they will limit production to such an extent that there will be somewhat of an artificial scarcity.

Mr. BLAISDELL. I agree with you, Senator.

Senator CLARK. Is it not a fact that not only has there been a limitation in many codes of the production of existing agencies, but that there has been a very steady attempt in many codes to outlaw the introduction of new agencies into the field of production? In other words, I refer particularly to the so-called "control", the birth-control provision of the lumber code, which was to outlaw the bringing into production of lumber by any additional areas or any additional agencies.

Mr. BLAISDELL. Mr. Edwards here, who has been very closely connected with the technical work, says that there have been, roughly, 20 codes with such provisions.

Senator BLACK. To do what?

Mr. BLAISDELL. To limit the introduction of new facilities.

Senator BLACK. Some codes affect businesses with a few customers and some affect millions of customers. Are these codes with reference to big businesses or little business, big industries or little industries?

Mr. BLAISDELL. The lumber code to which Senator Clark referred affects all of us.

Senator CLARK. The same thing was true of the shipbuilding code, was it not?

Mr. BLAISDELL. The suggestion is here that we do not believe so. But I am not sure. We can check on that.

Senator CLARK. A very strong attempt was made to include that in the shipbuilding code.

Mr. BLAISDELL. That is probably true.

Senator CONNALLY. How does the N. R. A. reconcile that with its purpose to increase employment and put more men to work when they are limiting the production and insisting that no new industries be brought in?

Mr. BLAISDELL. Senator, this board has been unable to reconcile it.

Senator CONNALLY. How does any board of the N. R. A. reconcile it?

Mr. BLAISDELL. I cannot speak for other boards, Senator. I believe you will have before you the Chief of the Research and Planning Division, who can probably give you considerable technical information. I understand—again Mr. Edwards refreshes my memory—that we have kept such provisions out of many codes.

Senator CONNALLY. Is not the very creation of your body, a Consumers' Advisory Board, an admission that if you did not have such a board that the N. R. A. would skin the consumer? Is that not an admission that you have to watch them?

Mr. BLAISDELL. It is certainly a recognition of the danger.

Senator CONNALLY. That is what I mean. In other words, they set up that board to protect the public from them?

Mr. BLAISDELL. Certainly, it was conceived to be the function of this board to advise on those points. I believe you were not here yesterday, Senator, when I tried to explain the function of the board itself. It has always been an advisory board.

Senator CLARK. Without power.

Mr. BLAISDELL. No specific power, except as it makes recommendations, and they may be ruled favorably toward or against.

Senator CONNALLY. In other words, they recognized the necessity for such a board, but when they set it up they pulled its teeth so that it could not bite.

Senator BLACK. They never gave it any teeth.

Mr. BLAISDELL. The same thing might be said for the Industrial Board and the Labor Board, but they seemed to have very strong teeth outside.

Senator CONNALLY. The consumer is really the forgotten man, isn't he? You need not answer that.

(Answer off the record.)

Senator KING. Proceed, Doctor.

Mr. BLAISDELL. I had divided industry, roughly, into four main groups. I said the first section obviously needs little regulation, and we discussed that in some detail. The second, in which competition has run rampant, needs a considerable measure of regulation.

We are not dealing with the third section at this time. It is conceivable that the fourth group needs to be regulated by codes of fair monopoly rather than by codes of fair competition. Unless the Congress is to direct the reestablishment of competition in these industries.

Senator CLARK. Will you define what you mean by a code of fair monopoly? That is a new phrase in our legal nomenclature, as far as I know, in this country.

Mr. BLAISDELL. I used the phrase to literally draw a sharp distinction——

Senator CLARK (interrupting). I think it is a very arresting term, and I would like for you to define it.

Mr. BLAISDELL. If we are going to have monopoly, even under the antitrust laws as they now are, were there no N. R. A., I see no way of dealing with them except under public regulation. If we assume that our public-utility bodies have been able to regulate prices and establish fair rates—I assume that they are fair monopoly prices, although there might be some question even on that.

Senator CLARK. You refer to the present state of our law. Under the present state of our law, with the N. R. A. in force, any monopoly is a legal monopoly if it is approved by the N. R. A., is it not?

Mr. BLAISDELL. If approved by the N. R. A.

Senator CLARK. Or any monopolistic practice is legal if approved by the N. R. A.?

Mr. BLAISDELL. If approved by N. R. A.

Senator CLARK. Pittsburgh-pluses, price-fixing, regulation of rebates, or anything else which is approved by the N. R. A. is legal in the existing state of our law if the N. R. A. were in force, if approved by the N. R. A.

Mr. BLAISDELL. I agree with you. And again I press the point that if these are to exist, they must exist only under proper regulation.

Senator BLACK. If I understand you there, it is an idea like we had on the railroads. There was no competition, and they were monopolies. So the Government decided to regulate them and fix the price and limit the profits.

Mr. BLAISDELL. Yes, sir.

Senator BLACK. And it is your idea that if we are going to do away with the competition in any field of business, then it is that the Government has no right to stop, so far as the consumer is concerned, after competition is eliminated, until they regulate that business, its profits, its bonuses, its salaries, and its unnecessary expenditures?

Mr. BLAISDELL. Right.

Senator CLARK. Does it not inevitably follow that if the Government through N. R. A. is going to permit the fixing of prices, it must necessarily fix a limit of profit?

Mr. BLAISDELL. I would agree with that; yes, sir.

Senator KING. Would that not result, that plan, in a complete regimentation of our industrial life? Would it not be just as much of a regimentation as that which exists in Italy?

Mr. BLAISDELL. Senator, there we come to the question as to whether we are to be regimented by private monopoly or whether we are going to regiment the monopoly or regulate it.

Senator KING. Is it regimentation when the farmers go out and compete in the raising of wheat in various parts of the United States, or cotton in various parts of the United States? Is that regimentation? Does not the law of supply and demand, the needs of the people, not only have something to do with production, but with the losses and the profits?

Mr. BLAISDELL. Does not competition have something to do with that?

Senator KING. Yes.

Mr. BLAISDELL. Of course, it has something to do with it, Senator.

Senator KING. You are not recommending, are you, a complete control of our industrial life by the Federal Government regardless of State lines or intrastate authority and power?

Mr. BLAISDELL. Senator, I was trying to distinguish certain groups in industry. And I said that for the great majority of them it seemed to me that competition was still the most important regulating force, and I was suggesting that there were certain other specific industries in which monopoly was already present, irrespective of whether there was any N. R. A. act or not, and it was to those industries that I was directing my remarks.

Senator CLARK. I am not certain that I made my question perfectly clear, because I do not think Senator King and I were driving at the same point. If it be true that it is necessary in any given industry to permit certain monopolistic practices which have been done by the N. R. A. without dispute—regulation of prices, fixing of prices, the setting up of special classes, the matter of rebates, all of which practices have heretofore, over a period of nearly half a century, been outlawed by our law under the Sherman antitrust law, does it not follow if those things are necessary that there should be a very definite and rigid regulation of profits. In other words, my complaint against the N. R. A.—one of my complaints against the N. R. A.—is that they permitted the setting up of such monopolistic practices as I have talked about, and at the same time had made no effort at all to follow through by regulating profits.

Mr. BLAISDELL. In answering that question, Senator, may I refer again to the statement which this board submitted regarding the provision of the act?

Senator CLARK. I would be glad to have you do that, Doctor, and if I am repeating questions which have heretofore been asked and answered, I apologize, because I have necessarily been in attendance upon another committee and have therefore not been able to be here all of the time during your testimony.

Mr. BLAISDELL. This is a subject which I do not believe has been touched. We are referring here specifically to the natural resource industries, where we have suggested that some kind of control may be desirable.

In this report of January 7, 1935, we stated [reading:]

> Natural resources industries such as lumbering, bituminous coal mining, and petroleum extraction, differ from other code-controlled industries in that they alone present the problem of conservation. The active competition which elsewhere serves the consumer's interest here occasions flagrant waste. It is unthinkable, therefore, that they should again be subjected to the antitrust laws. But code control is not the only alternative. The codes are concerned not with ultimate shortages but with temporary surpluses. They are directed not toward the conservation of resources but toward the conservation of profits. In no case do they cope with the basic difficulties of the extractive industries. These industries require controls specifically designed to meet their peculiar needs. The very measures by which resources are conserved often place a check on one group of profit seekers and augment the receipts of others. Equity, therefore, demands that any set of output restrictions be accompanied by a tax which will appropriate for public uses the increase in income attributable to the controls which the Government has applied. The consumer may fairly be asked to pay more for oil in order to conserve its supply but he may reasonably object to a policy whereby the Government compels him to contribute to the creation of private fortunes. The natural resource industries are too vitally affected with a public interest to be turned over to what is called "self-government in industry." They must be regulated by public agencies for the common welfare.

Senator CLARK. It is a fact, just using the lumber code as an example, it is a fact, is it not, that in the lumber code, on the theory of maintaining a minimum wage, they were permitted to set up every

sort of a monopolistic practice which had been outlawed for nearly 50 years, not really for the purpose of maintaining a minimum wage, but for the purpose of paying for a lot of old, dead horses that the lumber magnates lost before N. R. A. was ever established. Have you not found in your investigation of that, that that was a fair statement of the situation?

Mr. BLAISDELL. I think that is a generally fair statement, Senator Clark. I would like to call attention that just this afternoon, I believe, the lumber code itself is under discussion for revision.

Senator CLARK. I am glad to hear that, although I think it is considerably belated.

Mr. BLAISDELL. I simply give that as information. I understand there is no birth-control provision in the lumber industry.

Senator CLARK. I can speak with some experience on that. The birth-control provision in the lumber code was under consideration just about a year ago, and the lines were all set to put it into the code, and I introduced a resolution in the Senate to have the Federal Trade Commission investigate the monopolistic practices of the lumber code, and they forthwith abandoned it.

Senator KING. Proceed, Doctor.

Mr. BLAISDELL. I just said that it is conceivable that this fourth group could be regulated by codes of fair monopoly rather than codes of fair competition.

The National Industrial Recovery Act is apparently a device, and I emphasize "device", for dealing with these various types of industry, no one of which can be handled in a cut-and-dried fashion. Flexibility in administration is essential. It is because I believe there is a necessity for such an instrument that I support the act in spite of what I feel to have been very grave errors. I also feel that many months of experience have played a valuable part in clarifying these problems of American industry and the methods of dealing with these problems are being faced within the Administration.

The Congress might well require that the National Recovery Administration report to it the results of this experience and provide for such future reports, should the Congress decide it wise to extend the act.

I have referred to present detailed suggestions of the Consumers' Advisory Board in connection with this revision of the act, and if you wish I will submit that complete memorandum for the record.

Senator CLARK. I will be very glad to have it go in.

(The report submitted by the witness is as follows:)

NATIONAL RECOVERY ADMINISTRATION—RELEASE NO. 9508

The National Industrial Recovery Board has received a memorandum from the Consumers' Advisory Board containing recommendations for the revision of the National Industrial Recovery Act. Although there has been no opportunity for formal consideration of these recommendations, which were submitted Saturday, January 5, the National Industrial Recovery Board immediately made them public in the belief that discussion of all such proposals is desirable.

The text of the memorandum is attached.

THE PURPOSE OF THE ACT LOST SIGHT OF

When the National Industrial Recovery Act was passed in 1933 Congress included in its statement of policy its purposes, "to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue re-

striction of production * * * to increase the consumption of industrial and agricultural products * * * and to conserve natural resources." With these purposes the Consumers' Advisory Board is in complete accord. The Board believes that such policies should have dominated the administration of the act and should be made effective in the revision which the new Congress is now compelled to undertake. If the Recovery Act, in its practical application, has unduly restricted production, prevented the fullest possible utilization of productive capacity, or failed to increase consumption, it is because the pressure of special interests for individual advantage has diverted the course of the act from that which Congress intended it to follow.

MORE THAN AN EMERGENCY

The problem before the Congress is no simple one. It involves not only the adoption of those policies best calculated to promote industrial activity and employment but also the determination of methods to be employed in meeting the more persistent issue of industrial regulation. It presents for solution problems of the extractive industries, manufacturing, distribution, and the service trades. It raises the whole question of enforced competition as opposed to controlled monopoly.

EVERY PRODUCER A CONSUMER

Every citizen has an interest in these issues both as a producer and as a consumer. His interest as a producer is a particular interest which may often come into conflict with the interests of others. His interest as a consumer is a more general interest which all citizens have in common. It is from the point of view of this general interest that the Consumers' Advisory Board offers its observations upon the forthcoming revision of the act.

THE CONSUMER INTEREST

The consumer's interest requires that goods be turned out in large and increasing volume, that living standards may be advanced to the highest level to which our productive capacity and our technical skill can raise them. Competition which contributes to this end must be encouraged, prices kept low. There must be maintained in the industrial system a degree of flexibility which will permit the low-cost to displace the high-cost plant, the more efficient producer to supersede his less efficient competitor. The door must be kept open to new products and processes, to new blood and new ideas.

SHOULD WE PUT ON THE BRAKES?

The evidence is conclusive that the people of the United States do not have and never have had an average standard of living high enough to justify complacent acquiescence in any program which restricts production. Thousands are improperly fed, badly housed, inadequately clothed. Nearly all of us could increase our consumption of goods and service without overindulgence. In such a situation it is fantastic to talk of overproduction. There has been overcapacity only in the sense that industry has produced more than it can sell at high prices. If prices are not so high as to prevent it, idle labor and capacity will be put to work and the so-called "surpluses of the goods" of which our people stand in desperate need will shortly disappear.

A FLOOR FOR COMPETITION

The consumer wants a low price, but he does not want such a price if it is to be obtained only by depressing labor standards, by impairing the quality of goods, by practicing misrepresentation or by squandering precious natural resources. He does, however, want the lowest price which is consistent with conservation, with honest merchandising, with proper quality, and with decent wages, hours, and working conditions. His interest is to be served neither by unbridled competition nor by unbridled monopoly. Competition forces prices down, but it may do so at the expense of the worker, the consumer, the fair competitor, and the coming generation. There is no indication that monopoly deals more decently with labor, gives high quality, eliminates deceptive competitive methods or conserves resources; it does however enjoy the power to establish prices which will reduce the volume of industrial output and impair the standard of living. What is needed is an intermediate program which might at once put a floor under

labor, consumer, and trade standards and preserve the protection against undue price increases which competition affords above that floor. Adoption by industry of codes of fair competition confined to the establishment of minimum conditions of employment, quality guarantees and competitive standards might have provided such a program. That the present codes have gone far beyond these simple minima is a matter of common knowledge.

THE CODES DISTORTING THE ACT

Some groups have employed the codes, frequently in violation of the purpose of the act and even in defiance of their plain terms, as a means of eliminating active price competition, increasing and protecting profit margins. Prohibitions against sales below "cost", basing-point price systems, minimum mark-ups, maximum trade-ins, resale price maintenance, limitations on discounts and guarantees, minimum prices—such restrictive code provisions have little to do with the establishment of basic standards for labor, quality standards for the consumer or simply honesty for the trade. They may be used, directly or indirectly, to control prices and profits. They aim not to regulate competition but to eliminate it. Insofar as they boost prices they operate to reduce output and impair living standards. They are anticonsumer both in intent and effect. Such powers cannot safely be entrusted to private agencies unless accompanied by effective public supervision.

INDUSTRY PUTS ON A STRAIT-JACKET

Certain industries have seized upon the codes as an opportunity to protect established concerns against the growth of rival producers. They have set up standard differentials in the discounts granted to different types of distributors, imposed standard methods of cost accounting, limited machine hours, endeavored to allocate production and to check the introduction of new equipment. The inevitable tendency of such provisions is to destroy that flexibility which is so essential to the success of small enterprises and to the growth of economic efficiency. When he adopts them, the business man deliberately places himself in a strait-jacket from which the community will soon be called upon to extricate him.

CAN WE PREVENT DESTRUCTIVE PRICE-CUTTING

It may be well questioned whether the Government should undertake to outlaw "destructive price-cutting." In practice it is next to impossible to identify the destructive price-cutter. In general the designation is applied to any business man who undersells his competitors. If he undersells by exploiting his workers or misrepresenting his products his price-cutting may fairly be called destructive. But if he undersells by virtue of his superior efficiency there is nothing socially destructive in his policy. The practical difficulty comes when we attempt to discriminate between price cutting which is and that which is not socially justified. Any device which can be employed to check destructive underselling—resale price maintenance, minimum price fixing, prohibitions against selling below cost—can also be used to eliminate legitimate price competition. Any ban on destructive price-cutting lets the camel's nose in under the tent.

OPEN-PRICE SYSTEMS

The open-price reporting systems which are permitted under many of the codes carry possibilities both of use and of abuse. In some industries price-reporting may be used to increase the general availability of price information and to stimulate genuine price competition. Elsewhere it may be employed to fix collusive prices and to compel individual business concerns to adhere to them. Any permission granted industry to make use of open price reporting should therefore be surrounded with such safeguards to guarantee against its abuse as have already been suggested by the Consumers' Advisory Board.

PROFIT WITHOUT RISKS?

The effort has been to stabilize profits. But profits cannot be stabilized under a system of industrial freedom. Freedom involves risks. Profits are the incentive, losses the hazards of those who assume risks. When risks are eliminated the economic function of profits disappears. The authors of many of the codes apparently were determined both to have their profit cake and to eat it. In attempt-

ing to guarantee themselves a profit margin they have tried to shift to other groups in the community those risks which it was their own function to assume. The effort to stabilize profits come perilously near to stabilizing poverty.

A SHOTGUN ATTACK

No common formula can be applied to the control of several hundred separate industries and trades which differ one from another in their essential economic characteristics. Some are composed of several thousand small, scattered units; others are dominated by a handful of powerful concerns. In some it is next to impossible to subject the individual producer to any common control; in others it is fanciful to expect him to exhibit any real independence. Some employ a few hundred, others hundreds of thousands of workers. Some produce necessaries, others nonessentials. In some, competition may be counted upon to eliminate waste; in others it inevitably begets it. Yet each finds itself functioning under a code authority which is administering the labor clauses, the fair practice provisions, the price and quantity controls of a code of fair competition. It should be apparent by now that the complexity of the industrial system demands a more discriminating approach.

CONSERVING RESOURCES OR CONSERVING PROFITS?

Natural resources industries such as lumbering, bituminous coal mining, and petroleum extraction, differ from other code-controlled industries in that they alone present the problem of conservation. The active competition which elsewhere serves the consumer's interest here occasions flagrant waste. It is unthinkable, therefore, that they should again be subjected to the antitrust laws. But code control is not the only alternative. The codes are concerned not with ultimate shortage but with temporary surpluses. They are directed not toward the conservation of resources but toward the conservation of profits. In no case do they cope with the basic difficulties of the extractive industries. These industries require controls specifically designed to meet their peculiar needs. The very measures by which resources are conserved often place a check on one group of profit-seekers and augment the receipts of others. Equity, therefore, demands that any set of output restrictions be accompanied by a tax which will appropriate for public uses the increase in income attributable to the controls which the Government has applied. The consumer may fairly be asked to pay more for oil in order to conserve its supply but he may reasonably object to a policy whereby the Government compels him to contribute to the creation of private fortunes. The natural resource industries are too vitally affected with a public interest to be turned over to what is called "self-government in industry." They must be regulated by public agencies for the common welfare.

WHERE THE ANTITRUST LAWS FAIL

In other industries, not a few in number, monopolistic control is notoriously present. Competition had passed away long before the enactment of N. I. R. A. It could not conceivably be resurrected by the reapplication of the antitrust laws. Here these laws are impotent. But we are not ready to go to the other extreme of applying public-utility regulation, controlling securities, accounts and services, determining valuations and setting rates. We are confronted, therefore, with the necessity of applying some other type of control. We believe that it would be wise to experiment further with control by codes in this field. Such codes should outlaw monopolistic price practices, but they should be administered by authorities whose membership largely represents the public interest. They should require regular collection, reporting, and publication of statistics on costs, prices, and profits. It may be necessary to supplement such supervision and publicity by revoking the monopolist's patents, removing the tariffs which protect his market, taxing his profits, forcing him to face public competition or applying other controls which go beyond the scope of the recovery act. The Federal Trade Commission has recently made to the Congress a number of recommendations which should be seriously considered in this connection. The code of fair competition is one of many weapons in the arsenal of public control. It deserves a further trial.

OVERDOING THE CODES

In the vast majority of industries, which present neither the problem of conservation nor that of de facto monopoly, the codes might serve three important purposes. They might create quality standards for the protection of the con-

sumer. They might set up minimum wage and hour standards for the protection of labor. They might establish trade-practice rules for the protection of the business man against his less scrupulous competitor. Each of these purposes might be better served than it is through the present code mechanism. The amount of quality protection which the codes have given the consumer is negligible. It is unlikely that quality standards will ever emerge from a codification process in which the initiative resides primarily in industry. The standards which are needed by industry itself in order fairly to fix the quality level of price competition are unlikely to appear until they are developed and promulgated by some consumers' standards agency established by the Federal Government. Minimum standards for labor, if they cannot be established by statute, may be written into codes. But it should not be necessary to set up extensive and costly private machinery for their enforcement. It is already recognized that the enforcement of labor provisions cannot be left to industry alone. Public factory inspection and public prosecution of labor code violators is the answer. Trade-practice rules, finally, if confined to matters which have already been legally established as unfair, may be enforced through the Federal Trade Commission and the courts. There is a necessity, however, for a simplification of procedure to expedite the handling of these complaints.

SIMPLIFYING THE CODES

It seems desirable in any future continuation of the N. R. A. to confine the great majority of the codes to a few simple provisions covering clearly established unfair trade practices, incorporating publicly approved consumer standards, prohibiting child labor, setting maximum hours and minimum wages and providing for the right of collective bargaining. The Government, if it is to prevent competitive impairment of labor standards, must retain the right to impose such codes and must itself provide for the enforcement of their labor provisions.

BUSINESS RIGHTS OR PRIVILEGES?

Under exceptional circumstances it may appear to be wise to carry a code beyond simple labor, quality, and fair practice minima. Business may make out a case for the establishment of standard cost accounting systems, open-price reporting, the collection and sharing of statistical information, the adoption of standard contract forms, the limitation of discounts, premiums and guarantees, the prohibition of loss-leaders or even for the temporary imposition of output and capacity controls. Each of these devices substitutes central control for active competition. Each may be used to establish something other than a competitive price. Each achieves legal status only by public consent. None can be made completely effective without public support. If anything is granted to any business in a code, therefore, beyond the simplest labor, quality, and trade practice minima, it must be granted not as a right but as a privilege.

BALANCING POWER WITH CONTROL

Each such extension of privilege should be conditioned upon a proportionate extension of protective control. Government cannot safely turn over to private agencies public privileges which are subject to serious abuse. It follows that public membership on code authorities should increase as the powers of these agencies are increased. This is a principle which has already been recognized in the petroleum code. The precedent should be followed in the establishment of other authorities. A single administration member might suffice on a code authority which deals only with labor, quality and fair practice minima. Any agency, on the other hand, which administers the output, price and profit controls which must be present in the government of the natural resource industries must be predominantly public. Between these extremes, public control must balance grants of power. Public representation on the authorities administering the codes of those industries where high concentration assures market dominance should at least equal that of industry itself. We are not prepared to recommend a simple common formula for the designation of labor or consumer members on each of these bodies. It may be well for a time to experiment with different methods of representing these interests, both direct and indirect. Our only insistence is that they must be represented.

THE TARIFF

The section of the act which provides for possible increases in customs duties has not been employed to raise trade barriers. It nevertheless carries, as long as it remains in the law, a constant threat to our trade with other nations. Insofar as it may be used to reduce the importation of such raw materials as lumber and petroleum it conflicts with the announced policy of conserving natural resources. Insofar as it may be used to increase rates on goods which are produced under monopolistic conditions in the United States, it robs the Government of one of the most effective weapons which it can use to attack monopoly. Its very presence on the statute books cannot fail to embarrass the administration in its present efforts to negotiate reciprocal tariff pacts and to find foreign markets for our agricultural products. This section should be dropped from the act.

TURNING ON THE LIGHT

Clearly included in any legislative reconstruction of N. R. A. should be detailed provision for the collection, analysis, interpretation and publication of industrial and trade statistics. A Federal agency should be designated to prescribe the subject matter of reports, their form, and the time of their collection. It should be further empowered to place a member of its staff in every code-authority office to procure compliance with the reporting provisions of the law.

Such representation might well be financed by levying a specific fee against the code authority for the Government's statistical service. Information thus collected should be made available in summary form, without identification of individual reporters, to the industry and to the general public. It might be extended to cover orders, materials on hand, goods in process, stocks on hand, sales, prices, employment, wages, hours, pay rolls, equipment, contracts, costs, and profits. The opportunity is now open to obtain the information upon which both business policy and public policy should be based in the years to come. It should not be passed by.

WHAT NEEDS TO BE DONE

We recommend, in conclusion:

(1) That the Government retain the right to impose codes of fair competition as a measure of industrial control.

(2) That the vast majority of these codes be confined to the establishment of simple minimum standards, governing hours, wages, child labor, collective bargaining, and fair-trade practices.

(3) That there be added to these standards comparable quality standards for the protection of the consumers.

(4) That definite limits be set on such price and quantity controls as may be permitted to code authorities in exceptional cases.

(5) That public membership on code authorities be made proportionate to the powers which they exercise.

(6) That the tariff section of the act be repealed; and

(7) That provision be made for the collection of complete industrial statistics.

Whether the policy embodied in these recommendations should be written explicitly into the law is for Congress itself to decide. In the main, it might be carried out in the administration of the act without specifically amending its terms. These proposals do not constitute a complete program of public control. They are presented, rather, as minimum requirements which should be met even if Congress confined itself to a brief emergency extension of the act. Continuance of the Recovery Act as an emergency measure, however, will merely postpone issues which must sooner or later be faced. Social control of lumber, petroleum, bituminous coal, public regulation of those industries in which high concentration has destroyed market freedom, establishment of consumer quality standards, establishment and protection of minimum standards for labor, in short the socialization of monopoly and the civilization of competition—these are human objectives which cannot long be delayed.

Senator KING. Doctor, I am going to interrupt you right now to read a paragraph, if you will pardon me, and then I will ask you to comment on it, if you care to. Is not this the fact [reading]:

In the first place, the N. R. A. Legal Division took the position that the antitrust laws were entirely suspended. The administration took the position that

industry was making the codes and was entitled, therefore, to insert anything it believed to be necessary or desirable for industrial recovery. The result was that an entirely new construction was given to unfair competition. Under the antitrust laws, monopolies and monopolistic practices were well defined, as had also been the term "unfair methods of unfair competition" under the Federal Trade Commission. Blazed trails were, however, disregarded by the N. R. A. almost completely, and monopolies or monopolistic practices permitted under the assumption that the antitrust laws were repealed. Unfair competition, formerly regarded as the prohibition of those practices which tend to create monopolies and create a free and open market were construed to mean practices which did not tend to suppress competition.

Thus, the codes contain one or more of the following practices: Open prices resale prices, price maintenance, price-fixing, compulsory cost systems, floor costs, uniform costs, average costs, uniform contracts, uniform discounts, customer classification, allocation of production, production control, and various other devices intended to suppress all competition between the various members of the different groups.

Have you any dissent from that statement?

Mr. BLAISDELL. Senator, I would have to refer to the Legal Division of the N. R. A. for what they intended to do or what their interpretations were. I am not acquainted with those. I suppose that the Legal Division of the N. R. A. was consulted in connection with these matters. I assume also that, in writing the act, it was the intention of Congress that a broader interpretation should be placed on some of these provisions. I so assume that, otherwise I do not see any reason for the act itself.

Senator CLARK. Doctor, the act, in terms, suspended the antitrust laws of the United States insofar as they interfered with the discretion of the National Recovery Administration?

Mr. BLAISDELL. That is my understanding of what the act intended to do.

Senator CLARK. That was my understanding, and that is the reason I voted against the act.

Mr. BLAISDELL. The assumption was that there would be sufficient discretion in its use, at least, I assume that was the assumption in the Congress, or they would not have passed the act, so that it would not be misused.

Senator CLARK. The assumption was that, instead of Congress outlawing certain monopolistic practices which they had done by the Sherman Antitrust Act and the Clayton Antitrust Act, the discretion to suspend at will those provisions would be vested in an authority to be known as the "National Industrial Recovery Administration." That was the only fair conclusion to be drawn from the specific terms of the act, is it not?

Mr. BLAISDELL. I think so.

Senator KING. Do you assent to or dissent from the conclusion stated there as to those price-fixing and other provisions that are found in the codes?

Mr. BLAISDELL. Senator, we have opposed so many of those that I would have to agree with a great deal of the statement. I would not say that I would agree with it in every detail, in fact, it is my intention to submit to you this afternoon some of the very practices which are referred to there, and since I assume it is the intention in asking me to appear here, to make suggestions along those lines, I have appeared with the full intention of making suggestions for dealing with that type of thing.

I do not believe they should be continued. We never have believed in them, and that has been our position consistently from the inauguration of the N. R. A. Even in the early days when the Consumers' Advisory Board probably did not receive the attention that it has recently, I think it can never be stated that either Mrs. Rumsey or Dr. Keezer, who was at that time the executive director of the Board, ever backed down on each of those propositions.

Senator KING. Perhaps we are a little bit unfair in subjecting you to examination before you have completed your statement.

Mr. BLAISDELL. You are not unfair at all, Senator. I am here to try to give you such information as I have.

There has been no doubt with the Consumers' Advisory Board that provisions of numerous codes have had an effect of increasing price-control. In support of this position, the Board has presented to the National Recovery Administration itself a series of statements; first, a considerable volume of evidence on uniform bidding, and a considerable volume of evidence on the effect of open-price systems.

I shall refer first to the memorandum submitted by the Board at the conference of code authorities on January 9, 1934, then to a memorandum submitted to General Johnson in February 1934, and finally the memorandum submitted to the National Industrial Recovery Board at the public hearing on price policies in codes on January 9 of this year.

Senator KING. That is at the time when Dr. Keezer and others spoke?

Mr. BLAISDELL. Yes, sir. And the statement that you referred to yesterday, Senator.

I should first like to refer to this matter of open-price systems, and we will say this. Previous to the establishment of the N. R. A. the term "open-price system" had taken on a fairly well defined meaning.

Such systems were regarded as well within the bounds of public policy as stated in the antitrust laws. Business men, generally, had accepted them as valuable because more accurate information regarding the state of the market made it possible for transactions to be adapted more quickly to changes in market conditions. Such open-price systems were characterized by: (*a*) Voluntary reporting, (*b*) limitation of such reporting to past transactions, (*c*) the circulation to participants in the reporting system of the summaries of these reports.

The courts, as well as many business concerns, had frowned upon (*a*) the reporting of price quotations instead of prices of actual transactions, (*b*) the identification of particular transactions between known buyers and known sellers, since the use of such data might have an effect similar to that of collusive action in regulating prices.

Under N. R. A. codes the term "open-price system" has come to have an entirely different meaning. It has come to refer very largely to a system with the following characteristics: (*a*) the compulsory reporting of prices at which goods are offered for sale, (*b*) the identification of sellers and buyers, (*c*) the insertion of waiting periods within which price quotations might not be changed (except to meet lower quoted prices).

Office memorandum 228, which is a rather famous memorandum in the N. R. A., eliminated the waiting period as a matter of policy. I do not want to be misunderstood on that. As a matter of policy, it

was eliminated. That means that, as far as the codes that had been approved were concerned, it did not change their status unless those codes were dealt with specifically. Such codes as had waiting periods in them retained the waiting periods until they were negotiated out. Most of them had not been.

Senator CLARK. It is a fact, is it not, Doctor, that most of the strong industries rushed in and got their codes adopted very early in the action?

Mr. BLAISDELL. Yes, sir.

Senator CLARK. So that they were out of this change of policy?

Mr. BLAISDELL. Yes, sir.

Senator CLARK. This office memorandum was number 228?

Mr. BLAISDELL. Yes, sir. Those things would have to be taken up new and redone.

Senator CLARK. The provisions in those codes would remain unless specifically taken up and changed by the N. R. A. authorities?

Mr. BLAISDELL. Or unless changed by blanket order, which is possible.

Senator CLARK. But which had not been done?

Mr. BLAISDELL. But which had not been done.

Senator KING. Were not many of the codes which were gotten in on the ground floor, if I may be permitted that expression, after that number 228 order and after the statement by General Johnson to the effect that some of these price-fixing devices must cease, did they not immediately pounce down upon him and the N. R. A. and insist that a different interpretation be placed upon the situation from that which he had indicated in his order, and he immediately stated, or soon afterwards stated, that his statement applied not to codes that already existed, it was not to be ex post facto, but those that were to be granted in the future?

Mr. BLAISDELL. The order was not retroactive, Senator. I take it that that is the point of your question. There have been revisions of a small number of codes, even of those previously approved.

Senator BLACK. Doctor, from what I have gathered from your evidence here, and the rest of your evidence, it seems to me that so far as prices are concerned, it has in many instances been a crime to sell too cheaply; that is correct, is it not?

Mr. BLAISDELL. Yes, sir.

Senator BLACK. But it has not yet been made a crime to sell too high?

Mr. BLAISDELL. I am afraid that is also true.

Senator BLACK. Is there a single instance where it was made a crime to sell too high?

Mr. BLAISDELL. Not that I know of.

Senator BLACK. It is a fact, is it not, that in a number of instances it has been a crime to produce too much?

Mr. BLAISDELL. In some instances.

Senator BLACK. Has it in any instance been made a crime to produce too little?

Mr. BLAISDELL. Not that I know of, Senator.

Senator BLACK. So that the tendency has been, so far as the law is concerned, to make it a crime to produce too much, and to sell too cheaply. That has been the tendency, has it not?

Mr. BLAISDELL. You are drawing the implication from your own questions, Senator, which I think is sound.

Senator BLACK. There is no escape from it, is there?

Senator KING. And that the only protection which the public has had has been that given by the organization with which you are connected?

Mr. BLAISDELL. Senator, we have done our best to do what was in our power.

Senator BLACK. It is pretty hard to do that when you have a self-governing industry, is it not?

Mr. BLAISDELL. I think so. And, as I have stated before, I saw no excuse for permission of any type of regulation of this sort, unless it was in public utilities.

Senator CONNALLY. Does the N. R. A. require any reports from any of these industries as to their profits, to be filed with the N. R. A.?

Mr. BLAISDELL. No; not so far as I know. They call for reports from time to time on various things. There has been no general requirement of that sort.

Senator CONNALLY. I understand that some witness stated the other day that on the whole, business recovery had gone along, and cited as a fact, the increased profits of a great many concerns engaged in industry, and credited that to the operation, of course, in a large measure, to the N. R. A. Do you think that the N. R. A. ought to show some interest, at least, in these profits of the corporations which they have been making, as well as to be concerned about their volume and shutting down of production and control, and things of that kind?

Mr. BLAISDELL. I think it is a very important thing, to which attention should be paid, Senator.

Senator CONNALLY. As far as you know, they do not require any reports as to profits at all?

Mr. BLAISDELL. I think not.

Senator CONNALLY. Either annually, semiannually, or quarterly?

Mr. BLAISDELL. I think they secure their profit figures entirely from other sources.

Senator BLACK. The law does not provide for them to do that, does it?

Mr. BLAISDELL. I do not believe so.

Senator CONNALLY. They could do it if they wanted to, could they not?

Senator BLACK. I offered two amendments to the bill, and I had a third one in reference to profits, bonuses, and salaries, and after I had gotten run over upon both of the first two, I did not offer the third, but I called attention to it on the floor, that there was no provision to regulate profits nor to regulate bonuses and salaries and dissipation of the profits. I do not think the bill authorizes it. I voted against it on those grounds, and I stated why.

Senator KING. Proceed, Doctor.

Mr. BLAISDELL. In view of the fact that the functioning of codes since office memorandum 228 has revealed dangers and abuses for which the principles of office memorandum 228 do not seem to us a sufficient corrective we have taken the following position.

We have no objection to what open-price reporting was originally intended to be, i. e., price-reporting that will furnish information on competitive prices but will leave them competitive. To do this, a procedure must be established that will prevent collusion and permit

individuals or concerns to determine price on the basis of their own judgment of market conditions and customers. Price information usually does not require the publication of the names of either sellers or buyers, since the market information to which either is entitled is covered adequately by frequent publication of quantities sold and the range of prices.

We regard an open-price system in the original sense as an approach to the advantages furnished by organized commodity exchanges. We believe that there are many markets so monopolistic that in them even an open-price system thus limited could serve no such purpose.

We are also convinced that open-price systems such as heretofore have been approved in N. R. A. codes fail to act as substitutes for competitive markets. We are open to conviction that in a very few cases it may be shown to be desirable to use the "new style" open-price systems. But any such system should be safeguarded and should clearly state that it does not in any manner limit the prices which may be filed or quoted. In general, we are fundamentally opposed to the device as it has been used under N. R. A.

Senator CLARK. What classes of industries, Doctor, would that last observation apply to? I understand that you do not declare in favor of it. You say that you are open to conviction on it.

Mr. BLAISDELL. Yes.

Senator CLARK. What would be the situation on that, roughly?

Mr. BLAISDELL. There is a very interesting illustration that came to us the other day. If I may, I would like to ask Mr. Edwards to describe that, since he dealt with it in considerable detail.

Senator CLARK. I was about to suggest that when we want Mr. Edwards to respond to a question that he respond without writing you a note. [Laughter.] That involves no criticism at all. That is a practice that I think ought to be followed by all committees where there are a number of representatives from a department or bureau, that anyone who is particularly qualified could make the response.

Mr. BLAISDELL. Mr. Edwards dealt with a very interesting case.

Senator CLARK. I am going to suggest that throughout the progress of this hearing that whichever official be best qualified to answer may be permitted to answer.

Senator CONNALLY. We want fair competition, though. [Laughter.]

(At this point Mr. C. D. Edwards, technical director, Consumers' Advisory Board, N. R. A., submitted the following testimony:)

Mr. EDWARDS. We ran across a very interesting case in which there were four large doncerns which dominated an industry which has a total of some 24 concerns.

Senator CONNALLY. Why not tell us what industry?

Mr. EDWARDS. The clock manufacturing industry. These concerns distribute partly through mass distributors and chain drug stores and things of that sort, and partly through ordinary jewelry outlets, and according to the degree of national advertising which the concern has in the various incidents of its past history, they depend to differing degrees upon the mass distributor, so that one concern for example distributes primarily through mass distributors and does not care much about the jewelry trade.

Senator CLARK. Through chain stores?

Mr. EDWARDS. Yes, sir. Another distributes chiefly through the jewelry trade and does not care much about the mass distributors, and others are somewhere in between.

These concerns follow price policies that depend upon which one of these markets they like. One of them gives very large discounts to the mass distributors and makes no secret of the fact. The jeweler cannot buy as advantageously because the manufacturer does not greatly care about him.

Another one protects the jewelers and refuses to give the mass distributor any special discount because he relies chiefly on the jewelry distribution.

The third one says that he gives the mass distributors very large discounts, but if his jeweler customers knew of it, he would not do any such thing; that they would come down on him too hard.

And the fourth one refuses to state entirely what kind of discounts he gives, in fact.

So that I drew the inference that the discounts were largely a matter of bargaining power of the individual customer. It seemed to us in those cases that secrecy of prices, at least in 1 of these 4 cases and probably in 2, was the means by which you got very definite discriminatory pricing. A pricing that the man could not defend if it got out in the open, and probably would not prevail if it got out in the open.

This industry wished to be permitted to have an open-price filing system provided it was allowed to exchange prices among its own members but not make its prices available to customers. The standard open-price clause which is included in item 228 makes the prices available to customers as well as to members of the industry, and the industry declared very frankly that if they had to have that, they would rather not have any open-price system at all. In that particular case there was some argument at least for an open-price system from the point of view of the customers.

Senator CONNALLY. Was there any evidence that they were acting in concert in one sending his goods chiefly to the chain stores and the others to the jewelry trade, farming it out?

Mr. EDWARDS. You mean an agreed division of the market?

Senator CONNALLY. Yes.

Mr. EDWARDS. We saw no such evidence.

Senator CONNALLY. Was your eyesight good?

Mr. EDWARDS. I mean by that that we were investigating the particular proposals before us, and we did not make a comprehensive investigation of the industry, but nothing came to our attention that would indicate that.

Senator CONNALLY. That is an unjust discrimination in the form of a rebate.

Mr. EDWARDS. The pricing of at least one member of the industry seemed to be very much like the secret rebates.

Senator CLARK. In other words, what that member of the industry was doing was following exactly the same rebate practice, to use the most familiar case I suppose in the United States, that laid the foundation for the Standard Oil Co.'s control of the oil industry—a practice which was strictly forbidden by the terms of the Sherman Antitrust Act and the Clayton Act before the advent of the N. R. A.

Mr. EDWARDS. That seemed to us possibly a case where the open-price filing, new style, might be desirable.

Senator BLACK. I am interested in that new style, because the customer should know about it. What industry suggested that?

Mr. EDWARDS. I believe that was originally suggested by the Consumers' Advisory Board.

Senator BLACK. I assume that industry hastily approved it?

Mr. EDWARDS. Strangely enough, while some industries objected to it, others accepted it quite readily. The reaction was quite individual, depending upon the industry.

Senator CLARK. You mean the industries where the particular ones were trying to be on the up-and-up, and there were no monopolistic practices, approved it; and those who were trying to build up a monopolistic practice opposed it. Is that not about a fair statement?

Mr. EDWARDS. I think, generally speaking, your definition seems to be fair. There was one industry in New York which came down in a hurry to take that provision. It was a provision that customers might register their names and get the prices right along from the members of the industry, and they wanted it very badly because they had a provision that any customer could call at the office, and they said that all of the students in New York City were in their office writing price histories of their industry.

Senator BLACK. Have you had any hostility to that within the official circles of the N. R. A.; and if so, who was it?

Mr. EDWARDS. That is an established policy of N. R. A. to which, as far as I know, there is no dissent.

Senator BLACK. When it was proposed, did anybody fight it?

Mr. EDWARDS. If so, I am not aware of it.

(Mr. BLAISDELL at this point resumed his testimony.)

Senator KING. Doctor, I hope that you will not think that we are discourteous, but the Senate is in session and we are called in there every few moments, and some of the Senators have to be on the floor now, and there are several other committees in session which some of them must attend.

Mr. BLAISDELL. I recognize, Senator, that you are all very busy men.

We were talking about those particular industries in which monopoly or monopolistic practices existed and were effective previous to N. R. A., which had been possibly continued under N. R. A. or curbed by N. R. A.

In that connection, I wish to read some excerpts from one of the statements to which you referred the other day, Senator, which is entitled: "Private price control and code policy." That is a statement at the price hearing on January 9, 1935, by Dr. Ruth Ayres and Miss Enid Baird [reading]:

> If price control under the codes has proven impracticable, the withdrawal of price-control provisions will not of itself restore American industry to the controls of free competition. There will still remain the problem of industries that had successfully established and maintained internal controls in the price field prior to the N. R. A. Some of these industries had devised controls that were wholly legal under court interpretations of the antitrust laws—while other industries were making use of controls either expressly prohibited or subject to court action if proven. The economic effect of these different kinds of controls is often similar or identical. It is the existence of price controls exerted within an industry which is of significance; not the question of the existence of an illegal monopoly. Where it is known or seems probable that an industry representing a code of fair competition for approval has established some degree of price control, several courses of action are open to the N. R. A.:
>
> 1. It can, as in the case of the bolt, nut, and rivet industry, refuse to incorporate in codes provisions contrary to a consent decree.
>
> 2. It can grant provisions which, taken as a whole, adequately bolster the controls already established. An example of this type of action may be seen in the cement code, which, while it contains no specific provision incorporating the

well-established basing point system into the code, is replete with provisions which cannot but serve to implement the basing point system.

3. It can practically ignore the significance of the existing control as in the case of the temporary aluminum code. The fair trade practice rules of this code include a provision quoting only one section out of many from the consent decree under which the Aluminum Co. of America, sole producer of virgin aluminum in the country, has been directed to function; furthermore, no price-filing system, the publicity from which would be a restraining influence upon the monopoly, is provided.

There are numerous types of industries in which some degree of internal control existed prior to the N. R. A. In many instances present approved codes have incorporated and consolidated previous controls. The following examples illustrate some of the problem situations with which the N. R. A. is faced:

1. One of the means of legally effecting control over prices is through centralization of patent ownership. Sometimes this device is used spontaneously; sometimes it is used as a substitute for other means held to be contrary to the antitrust laws. A case in which price stabilization was achieved through a patent-licensing system is to be found in the asphalt shingle, and roofing industry, whose leading members, when charged by the Department of Justice with price fixing agreements, sold their patent rights to a single patent holding corporation which in turn granted patent leases freely to all on condition that specific selling terms should be used.

In this instance the terms of the N. R. A. code added further control to the existing situation.

I won't detail this, but will go on further.

Second. Where in cases such as the following, explicit price-fixing powers are asked from N. R. A., there is some opportunity for consumers to indicate the dangers of the proposal and to call attention to past records of price agreements. At the hearings on the proposed plan for stabilization of the newsprint industry their customers, the newspaper publishers, centered attention on the past history of the newsprint industry and on the consent decree of 1917 issued against members of the Newsprint Manufacturers' Association. This decree ordered said manufacturers to refrain forever after from any attempt to maintain and raise prices by collusive agreements.

In this particular case, because of the previous record of price fixing at a high level, plus the opposition of a well-organized buyer body, the adoption under the N. R. A. of the proposed plan of cooperative price control has to date been prevented, even though this plan was meant to raise a price that at the time of its proposal was generally admitted to be relatively low.

Third. When, as in the case of most industries, there is no adequate organization of the consumer group, and when price control powers are not explicitly written into codes, but exist under the shelter of, or in spite of, the codes, the responsibility for protecting the public interest necessarily falls heavily on the Government. The problem before the N. R. A. is especially linked with the administrative provisions in the codes when the method of achieving control is by private concerted action.

Consider glass. The files of the Department of Justice and the files of the N. R. A. deputy administrator show that a large plate-glass manufacturing company was at one time enjoined by decree from exercising methods of intimidation to control price; they show that members of the flat-glass distributing trade engaged in the allocation of sales territory as a measure of control, and that a heavy fine was imposed in this connection.

Yet the proposed flat-glass distributors' code provides for close interlocking between manufacturers and distributors. It creates five regional territories for the administration of the code, despite the fact that there have already been complaints that this set-up was designed for the very allocation of sales territory that was used in the past. The code does not provide clear protection against the possible misuse of this regional set-up for price-control purposes.

This code has not yet been approved. It is indicative of the attempt, that is all.

Continuing from this report:

Fourth. The next case is one in which the price-control provisions in a series of N. R. A. codes has resulted in the erection of a system of price control uniting an entire industry that has long been seeking this goal.

In the paper distributing trade there has been for years a program of resale price maintenance through the circulation of a so-called "blue book" of suggested mark-ups for the use of paper distributors in different regions and through cooperative cooperation with the manufacturers of various paper products.

This price-control measure was so carried on by the Pacific States Paper Trade Association that investigation by the Department of Justice resulted in the issuance of a consent decree in 1923.

I believe that investigation was a Federal Trade Commission investigation, and the decision in the case was afterward confirmed by the Supreme Court.

Senator KING. I am advised by the representative of the Federal Trade Commission that that statement is accurate.

Mr. BLAISDELL (continuing):

The distributors involved agreed to desist in the future from such combinations in restraint of trade.

Under the various paper codes the N. R. A. has supplied the missing links to a program of price maintenance throughout this entire industry. Most important was the achievement and the maintenance of identical prices by the manufacturers of paper, through the assistance of the elaborate price-filing mechanisms in the several codes of fair competition. In the paper distributing trade the regional set-up under the open price-filing provisions, and other sections in the code, have perfected the maintenance of uniform mark-ups; further, the mandatory replacement cost and labor mark-up clauses have assured a large measure of uniformity.

There has been long great stability of prices and a substantial control by manufacturers of certain grades of paper—notably in the book-paper industry—which was proceeded against by the Federal Trade Commission in 1916 for its activities in enhancing prices by methods that were in restraint of trade, but it remained for N. R. A. codes to complete the pattern of uniform prices, uniform discounts, and uniformly restrictive terms that face the purchaser of paper today. Uniformity of prices on Government bids during the last year and half offers eloquent testimony on this subject.

Fifth. In the textile bag manufacturing industry practices in regard to resale prices, terms, discounts and freight allowances had been seriously questioned by the Federal Trade Commission. It is only fair to this industry to state that nothing illegal was found in its activity. We are not raising the question of legality, but of economic policy.

This same association presented the Code of Fair Competition of the Textile Bag Industry in June 1933.

The N. R. A. might have chosen either one of two alternatives in its attempt to further fair competition in the textile bag industry It might have denied price fixing powers; it might have admitted such powers and provided safeguards to the public interest by including in the code special supervisory powers in the hands of the administration. It did neither of these two things.

What it did was to experiment with price controls. The protests of the Consumers' Advisory Board that the mandatory use of replacement costs for raw materials would tend toward price fixing were overruled on the ground that such a use of replacement costs was a customary practice in the industry.

I might emphasize, Senator Clark, these things have been existing prior to and without the consent of the N. R. A.

Senator CLARK. I am very sorry to have missed part of your statement. I am very much interested in it.

Mr. BLAISDELL (continuing).

Other price-control provisions of the code provided all the mechanisms necessary to achieve strong price control if the industry retained its previous wish to arrive at uniform resale prices. The code as approved stipulated that nonmembers of the Textile Bag Association should be represented on the code authority. Three months later, when evidence was presented that nearly all members of the industry were now members of the association, the code was amended, so that the code authority would be composed entirely of the members of the executive committee of the association. Thus the total effect of the code was to spread an umbrella over the industry by granting legal sanction to various devices used in the past to maintain prices.

This action was not the result of a demonstration on the part of the industry that any price emergency existed, for the report of the Research and Planning Division stated that the textile bag industry had maintained a very good position during the depression.

Through the N. R. A. the competitors of the Textile Bag Association have been drawn into its membership, and there remained only the public to be protected against any price-fixing tendencies that might reappear. Should the N. R. A. withdraw support from provisions that permit price fixing, affirmative protection of the public interest must still be assured.

Sixth. In the iron and steel industry we come to a case of a different sort.

Senator CLARK. If I may interrupt you there, I do not wish to interrupt your general trend. You seem to have come to the end of one section.

Mr. BLAISDELL. That is right.

Senator CLARK. When you say that investigation showed that there were no illegal practices on the part of the textile bag manufacturers, of course it is perfectly true that under the N. R. A. Act no practices which were hitherto considered violations of the antitrust act would be considered illegal if approved by the N. R. A.

Mr. BLAISDELL. Senator, I was referring then to the findings of the Federal Trade Commission.

Senator CLARK. Whether they be found by the Federal Trade Commission or by anybody else, nothing is illegal as far as the antitrust act is concerned if it is approved by the N. R. A.?

Mr. BLAISDELL. That is true; but I think you are missing the point. The point is that when the Federal Trade Commission investigated this, prior to the enactment of the N. R. A., they found that while they did not like the thing very much, there was nothing illegal about it, on which they could proceed.

Senator CLARK. I beg your pardon. I missed the first part of your statement, and therefore I missed the point.

Mr. BLAISDELL. Whether N. R. A. continued or not, here was a situation which seemed to present a monopolistic situation that would exist.

Senator CLARK. You mean absent N. R. A., the practices in which they were indulging were still in contravention of the antitrust act. I beg your pardon. I misunderstood it.

Senator KING. Proceed, Doctor.

Mr. BLAISDELL [reading]:

The practice in this industry of quoting prices on a Pittsburgh basis led in 1924 to the famous "Pittsburgh-plus" decree, which enjoined the industry from continuing this system of price control. The result of this order was the establishment of a number of other central basing points upon which iron and steel prices were quoted. Prior to the code, prices were held in close alinement because of the competitive threat of price cutting which dominant units of industry always possessed. But if it became advantageous for a producer to sell on his own terms, and if he were large enough or sure enough of his market to do so, the opportunity and the right were his to set his own price at what he believed to be profitable.

When the code of the iron and steel industry was approved it contained a mandatory basing-point system in accord with which all members of the industry must quote prices. Further, the mandatory character of the present extras and deductions, which are compiled by the institute and promulgated by it in its capacity as the code authority, make any deviation from the structure of relative prices for all industry products an illegal act and in no way subject to the judgment of the producer.

The code authority's emphasis upon an effort to control the structure of prices and to fix the limits within which all competition in the steel industry must take place is so great that it sacrifices very specific consumer interests. This is evidenced by the record in regard to the provision for the payment of all-rail freight

rates. With a few specific exceptions, the code required that all-rail rates from the basing point at which prices were quoted to consuming point must be charged to each and every consumer, whether or not the goods are carried by water.

To suggestions that this provision prohibiting charges on the basis of actual water-transportation costs is in principle basically unfair, the code authority has consistently replied that it will take the matter under advisement. Action does not follow, apparently because members believe that the total results of any change in this code provision would be so complicated and far-reaching upon the price structure of the industry that the code authority has been unable to devise a means of allowing customers to benefit from their natural location on lanes of water transportation.

Where an organized industry has taken unto itself the prerogative of controlling the ends and means of competition, any action on the part of a Government agency, which in any way strengthens, or by implication permits, the strengthening of internal controls, carries with it special obligation to see that the public interest is at the same time protected.

Senator CLARK. The Iron and Steel Institute, which is now, as I understand, the code authority, as a matter of fact, since its institution has been almost wholly controlled and dominated by the United States Steel Corporation, has it not? If you do not wish to express an opinion on that, I won't press it.

Mr. BLAISDELL. I would say certainly by the larger units in the industry, including the United States Steel.

Senator BLACK. I was told a few days ago, with reference to that, that the Iron and Steel Institute fined its members $10 a ton for each ton they sold under the fixed price. Is that true?

Mr. BLAISDELL. If it is a cartel regulation——

Senator BLACK (interrupting). I understand that it is in the Federal Trade Commission reports.

Mr. EDWARDS. They have a provision in their code for liquidated damage agreement.

Senator GORE. Does that include pretty much all the industries in the business or just limited numbers?

Mr. BLAISDELL. May I ask Dr. Ayres to answer Senator Black's question?

(At this point Dr. Ruth Ayres, code advisor, Consumers' Advisory Board, N. R. A., testified as follows:)

Dr. AYRES. The $10 per ton penalty does not apply except to the filed price; that is, in the iron and steel price. There is an open price filing for the filing of the basing point. As a matter of fact, those are uniform. Competition would lead them to be uniform, collusion would lead them to be uniform, and there is no possible way of saying where competition and collusion begin and end. But it is on the filed price and not on a fixed price.

Senator BLACK. It is on the base price, is it not?

Dr. AYRES. Each individual has the right, and it is when he sells below his own filed price that the penalty results.

Senator BLACK. As a matter of fact, all of those prices are the same, aren't they?

Dr. AYRES. All of those prices are the same. In either the end of June or July 1934, however, a certain individual concern initiated a group of prices lower than the April prices, and those were followed. In other words, it does not always work upward.

Senator BLACK. Have not some of them been fined $10 a ton for selling below that, by the Iron and Steel Institute?

Dr. AYRES. I have not the figures on that. I think there have been one or two cases, but they are probably few. I can give you the answer on that later, perhaps.

(Mr. Blaisdell at this point resumed his testimony:)

Senator CLARK. The late Judge Elbert H. Gary, chairman of the board of the United States Steel Corporation, was for many years head of the Iron and Steel Institute, was he not, Doctor?

Mr. BLAISDELL. I did not get the question.

Senator CLARK. I say, Judge Elbert H. Gary, who was the chairman of the board of the United States Steel Corporation, was for many years, up to the time of his death, the head of the Iron and Steel Institute?

Mr. BLAISDELL. I believe that since that time the head of the Iron and Steel Institute has been from the Bethlehem Steel Co.

Senator CLARK. That is in the same group, to say the least, is it not, Doctor?

Mr. BLAISDELL. Certainly. Now, gentlemen, I will skip the rest of this memorandum, except for a paragraph. We were urging at that time that it was cases of that kind which seemed to indicate the necessity for a broader approach to this particular type of problem. It was not the type of problem that could be solved by any such formula as self-government in industry, and the iron and steel case was a perfect example of what happened. So we suggested that merely to reform the present codes by ejecting their phrases about price control would not only leave well established in certain industries the actual conditions which the N. R. A. policy holds to be contrary to the public interest but would foster those conditions by the administrative unity maintained by the rest of the code. It does not do any good to just say, "Put it out", because you have the situation there which calls for positive action. [Reading:]

> In order that the codes may move toward fair competition rather than the establishment of permanently privileged groups in American society, they should not ignore but regulate or prevent the conditions which make for unfair restraint of trade.

I am sorry to impose such a long statement on you, Senator, but it seemed to me to have a number of different specific instances of the way that private control exists, irrespective of whether there is an N. R. A. or not.

Senator CLARK. Doctor, we were very glad to have you go into the very greatest possible detail on this subject, because you are striking at the heart of what we are very much interested in.

Mr. BLAISDELL. That is one type of control, both outside the code and supplemented by code, and under a possibly positive declaration of Congress that such things should be dealt with on the basis of Government control, might be handled.

Now, I would like to turn to the problem of uniform bids, and open-pricing systems, and I shall use for that purpose a series of documents which have come to me from Mr. Nicholson, a consulting member of our board, and also the purchasing agent and secretary of the central board of purchases of the city of Milwaukee and special representative of the United States Conference of Mayors. It has to do with the purchase of fire hose for that city and a number of other cities.

Senator KING. Doctor, did you intend to refer to a number of statements by representatives of this organization, the Consumers' Advisory Board, made at the price hearing on January 9, 1935?

Mr. BLAISDELL. I referred to one of them here, Senator, because it bore particularly on that point. If you care to have me comment on the others, I will be very glad to. I did not want to encumber the record too much.

Senator KING. I have read these statements very carefully, all of them. They contain a great deal of information which ought to be valuable to the committee.

Mr. BLAISDELL. I am taking this particular case, Senator, because it illustrates a whole series of problems that surround this problem of open-price systems and uniform bidding.

Senator KING. Proceed.

Mr. BLAISDELL. The Fire Hose Manufacturers operate under chapter 7 of the Mechanical Rubber Goods Division of the Rubber Manufacturing Code. That code contains a prohibition against selling below cost; provides for price-filling for standard products with a 10-day waiting period, and that on goods made to sustomers' specifications no member shall sell at a price lower than that of the member whose cost is lowest.

Also, these manufacturers, like all others, come under the President' Executive Order No. 6767, permitting a tolerance of as much as 15 percent below filed prices in bids submitted to governmental purchasing agents, including municipalities.

That was an order which had its inception, because of the complaints of the uniform bids to various governmental agencies, was meant to provide a leeway for bids below filed bids under open-price filing systems.

Senator KING. Was not there a report made to the President by the N. R. A. as to the operation and effect of that tolerance order?

Mr. BLAISDELL. There was such a report under way, in preparation, Senator, at the time when I left the N. R. A. several weeks ago. Whether it has been completed and submitted yet, I do not know.

Senator KING. I wish you would make inquiry, and if so, kindly produce it at the next meeting.

Mr. BLAISDELL. It was not a report by our Board. It was a report called for by the Research and Planning Division of N. R. A. I am informed that Mr. Henderson, the Chief of that Division, is to be called. It might be proper for him to present it.

Senator KING. I presumed there was sufficient friendly relations between your organization and Mr. Henderson that you could produce it.

Mr. BLAISDELL. I shall be very glad to try to produce it, if you would like me to.

Senator KING. If you will, please.

Mr. BLAISDELL. There is, therefore, nothing in the code to justify the 18 persons or concerns who submitted uniform bids to the city of Milwaukee.

Collusion for the purpose of price fixing, either by individual members or by the Rubber Manufacturers Association (as distinct from the code authority) are properly matters for investigation by the Federal Trade Commission, if such collusion took place outside of, and apart from, any code provision or administrative action.

Senator CLARK. Just on that point. Is there any distinction in fact between the code authority and the Rubber Association, or whatever the name is?

Mr. BLAISDELL. I believe in this case there is.

Senator CLARK. I understand that in some cases there is a distinction and in some cases not.

Mr. BLAISDELL. I may be mistaken on that, but my best recollection is that that is the fact.

Senator GORE. Is the point in this that a number of bidders submitted the same bids for fire hose to the city of Milwaukee?

Mr. BLAISDELL. Yes, Senator Gore. I gave you that background. Now I will give you the details of the case.

In February 1935, Mr. Nicholson, consulting adviser to our board, and purchasing agent of Milwaukee, and also representative of the United States Conference of Mayors, submitted to the Consumers' Advisory Board copies of communications submitted by him to the Federal Trade Commission charging collusion on the part of certain manufacturers of fire hose, and in submitting bids to the city of Milwaukee on January 31, 1935, it was found that 18 bidders had quoted identical prices on two specifications; that 15 bidders had quoted identical prices on one specification, and that 10 bidders had submitted identical bids on one specification.

Prior to the opening of bids the Bi-Lateral Fire Hose Co. wrote:

> We have every reason to believe that the prices will be the same * * *. We had to agree on the code prices * * * or we would be deprived of our N. R. A. eagle.

Senator BLACK. Whom did they write that to?

Mr. BLAISDELL. To the purchasing agent of the city of Milwaukee.

And when the bids were opened, January 31, 1935, it was found that 18 bidders had quoted identical prices on two specifications; that 15 bidders had quoted identical bids on one specification, and that 10 bidders had submitted identical bids on one specification.

There was one bidder (N. L. Kuehn Co. of Milwaukee) who "followed the President's Order No. 6767 had quoted approximately 8 percent below" the other identical prices on all four specifications. That company was awarded the contract.

A. D. Kunze (secretary, Rubber Manufacturers' Association; secretary, code authority, Mechanical Rubber Goods Division of the Rubber Industry Code) immediately wired Milwaukee purchasing agent: "Strongly recommend award be withheld pending our investigation."

The Milwaukee purchasing agent replied that the contract had been awarded to the lowest bidder.

In a letter to Senator Borah, February 27, 1935, Mr. Nicholson stated:

> A. D. Kunze, secretary Rubber Manufacturers' Association of New York, wired every manufacturer of fire hose in this country warning them not to accept or fill an order for fire hose from the Kuehn Co. for delivery to the city of Milwaukee.

In a communication to the Consumers' Advisory Board, Mr. Nicholson said:

> The city of New York has rejected bids eight times and yet has not been able to obtain any competition.

Mr. Nicholson asked the Federal Trade Commission, on February 11, 1935, to "undertake an investigation" of his charges; also, he asked the Consumers' Advisory Board, on March 2, 1935, to "go on record favoring an investigation."

The Consumers' Advisory Board was informed that the Federal Trade Commission had initiated an investigation as requested by Mr. Nicholson. We have since been informed by Mr. I. Burton, assistant chief examiner of the Federal Trade Commission, that the inquiry has been completed and the file is now before the Commissioners awaiting their decision. We have no information that N. R. A. was asked by Mr. Nicholson to conduct an investigation, or that charges of code violation were made against the fire-hose manufacturers.

Senator GORE. Which concern had that contract?

Mr. BLAISDELL. The firm that received that contract was that of N. L. Kuehn Co., of Milwaukee.

Senator GORE. And were they trying to buy from other concerns in order to fill the contract?

Mr. BLAISDELL. That is correct.

Senator GORE. And some agency in New York wired these companies not to supply Kuehn Co.?

Mr. BLAISDELL. Apparently.

Senator GORE. What happened?

Mr. BLAISDELL. I will give you the rest of the history.

Mr. Nicholson states that "there was a trust of fire-hose manufacturers before the N. R. A. when they were holding the price at 54 cents and making a substantial profit." (Letter to Federal Trade Commission, Feb. 11, 1935.)

We are informed by Assistant Chief Examiner Burton, of the Federal Trade Commission, that, to his knowledge, there have been no complaints or requests for investigation of fire-hose manufacturers, prior to the one now under consideration; that his experience with the Commission covers the past 10 years. The inference is that there was no Federal Trade Commission inquiry of the alleged "Fire Hose Trust" activities prior to the adoption of the code, or that conditions similar to those now complained of were specifically charged.

While it is obvious that the open-price filing system of the code makes it possible for each member of the industry to know every other member's filed prices, it is also true that the code permits a member to revise his prices downward (after a 10-day waiting period) and, also, in submitting bids to a municipality he may lower his filed prices as much as 15 percent. In the Milwaukee case only one bidder availed himself of the tolerance permitted and he was the one who received the order.

In a letter to the Consumers' Advisory Board, dated March 6, 1935, Mr. Nicholson said:

> The contractor (N. L. Kuehn Co.) called at this office yesterday and stated that thus far he had been prevented by the trust from making delivery of any of this hose and it looked to him as though he might have difficulty in obtaining any of this hose for use.

Again there is no charge that any specific provision of the code has been violated, or that the failure of the contractor to fulfill his order is due to any provision contained in the code.

There is a little more history in connection with that which indicates that this is a little broader proposition than the city of Milwaukee.

Senator CLARK. And the city of Milwaukee, if I understand correctly the exhibits which you just read—and correct me if I do not—the President's proclamation allowed a tolerance of 15 percent?

Mr. BLAISDELL. Right.

Senator CLARK. Which would permit one bidder under the code to bid against another if he wished to by bidding lower than the stated price?

Mr. BLAISDELL. Lower than the filed prices.

Senator CLARK. And the N. L. Kuehn Co., well within the 15 percent tolerance, bid 8 percent lower than the uniform bids of the other bidders.

Mr. BLAISDELL. Right.

Senator CLARK. Whereupon, the Secretary of the Rubber Manufacturers' Association of New York—which was to a large extent identical with the code authority, is it not?

Mr. BLAISDELL. Apparently.

Senator CLARK. Sent out a notice, not only to the city of Milwaukee advising them not to accept the bid, but sent out a notice to all of the members of that organization not to supply the successful bidder with the necessities for carrying out the contract?

Mr. BLAISDELL. Right.

Senator CLARK. Which meant in effect that while there had been no violation of the code by the successful bidder, that the dominant element in the code authority was actively entering into the situation to see that a man who did bid within the limit of tolerance and in accordance with the provisions of the code and the President's proclamation, below the other bidders, should not be able to perform his contract?

Mr. BLAISDELL. That is the essence of it.

Senator GORE. What is the exact name of this New York agent who notified these companies not to supply this material?

Mr. BLAISDELL. Mr. A. D. Kunze.

Senator GORE. And who was the one that got the contract, did you say?

Mr. BLAISDELL. Kuehn is the name of the gentleman who got the contract, and Kunze is the name of the agent.

Senator GORE. What is his official connection with the organization of the industry?

Mr. BLAISDELL. The secretary of the Rubber Manufacturers' Association, and also secretary of the code authority, of the Mechanical Rubber Goods Division of the Rubber Industry Code.

Senator GORE. Mr. Chairman, has he been called to appear before this committee?

The CHAIRMAN. Not yet, but we will get a statement from him.

Senator GORE. I want him brought here.

Senator BLACK. I think it could be submitted to the Department of Justice.

Mr. BLAISDELL. It was sent to the Federal Trade Commission.

Senator BLACK. In my judgment, it should be referred to the Department of Justice. I suppose they have a department for prosecuting such things.

Senator GORE. I want him brought here and I want to see if there is any way to make them supply the hose to those municipalities——

The CHAIRMAN (interrupting). Mr. Whiteley, will you get an explanation of this matter and arrange to get him before us?

Mr. BLAISDELL. I am presenting the only case as it comes to me. I am not making personal charges or anything of the sort. I am

interested in a situation here that seems to require some kind of handling. It apparently is not a matter that is cause by code action. But that code has possibly been used as a subterfuge and possibly as an attempt to misrepresent the situation, which was not according to the fact.

Senator BLACK. Has there been any regulation of N. R. A. that in cases where at least prima facie there is a clear violation of the law, the matter should be turned over to the Department of Justice?

Mr. BLAISDELL. Apparently this case was not brought to the N. R. A. This was brought to the Federal Trade Commission.

Senator BLACK. Is there any such regulation in the N. R. A.? Do you people in the consumers' department have any right to submit things to the Department of Justice when it is apparent that there has been a violation of the antitrust act, or seemingly so?

Mr. BLAISDELL. There is no such power, I believe, Senator. As a matter of fact, I am inclined to think—I would rather say as a matter of judgment rather than as a matter of fact—as a matter of judgment I should think that a revision of the act might very well call for a provision like that.

Senator BLACK. I see no reason why it should not be, even now.

Senator GORE. Is there not some authority here in Washington who has supervision over this gentleman in New York to tell him that he is transgressing the limits of the law and of propriety? Is there nobody that can revise or chastise him for violating the code?

Mr. BLAISDELL. He is not violating the code, Senator.

Senator BLACK. He is just violating the law. [Laughter.]

Senator GORE. If the President in Executive Order No. 6767 permitted a reduction of 15 percent below a fixed price, and this man comes within that limit of tolerance, and this gentleman in New York counteracts that or tries to upset that, is he not violating some rule, some law, some order, or something?

Mr. BLAISDELL. The matter has come to the Federal Trade Commission, and, as I stated, apparently the Federal Trade Commission has taken action, at least the matter is now before the Commission for hearing.

Senator GORE. If this code business is a cloak for that sort of activity, the sooner we unmask it, the better.

The CHAIRMAN. If the Federal Trade Commission should find these facts that you have stated, they would certify their findings to the Department of Justice for prosecution.

Mr. BLAISDELL. I believe the Federal Trade Commission would take either that action or if it were a violation of their own act, it would result in a cease and desist order.

Senator CLARK. But Doctor, the point is that it would appear from your statement that even with all the suspensions and exemptions of the antitrust act contained in the N. R. A. that this man is still guilty of a violation of both the Sherman and the Clayton Antitrust Acts, and there ought to be some authority, when it comes to their notice, to certify it to the Department of Justice for a criminal prosecution. Such practice as that is, of course, more nefarious, because it is carried on under the cloak of authority of the code authority under the N. R. A. Act, but nevertheless, unless I am very badly mistaken as to the legal proposition, even with all of the exemptions and suspensions of the antitrust laws granted by the N. R. A. this man has still committed a crime.

The CHAIRMAN. The code would not protect him.

Senator CLARK. That is exactly what I am getting at, Senator, as to why there is not some power or some responsibility on the officials of the N. R. A. or the Federal Trade Commission or any other governmental agency, when a matter of this sort is called to their attention, to certify it to the Department of Justice for appropriate criminal action.

The CHAIRMAN. That is in the law.

Mr. BLAISDELL. The Senator has made my suggestion better than I could make it myself.

The CHAIRMAN. That is in the law, and they will certify it.

Senator BLACK. But it seems to me that it has come up here openly now, and now that it has come out here publicly, I see no reason why it should not be turned over to the Department of Justice before tomorrow morning.

Senator CLARK. Meanwhile, Milwaukee is deprived of the fire hose. How long would it take the Federal Trade Commission and the courts to test this matter and decide it one way or the other finally so that they can get the hose? Is there not some sort of summary proceeding that some code authority here has when they see a man doing a thing like that to say, "Here, cut that out and tell these people to go ahead and supply this stuff."

Mr. BLAISDELL. Senator, it is not under the jurisdiction of N. R. A. It has not come to their official attention.

Senator CLARK. Is this man still secretary of the code authority?

Mr. BLAISDELL. Apparently he is acting in his other capacity.

Senator CLARK. Is he still secretary of the code authority?

Mr. BLAISDELL. As far as I know.

Senator GORE. Has anybody the power to remove him? Anybody here in Washington?

Mr. BLAISDELL. I suppose so.

Senator BLACK. He is the secretary of this self-governing board of industry, isn't he, and we would have to let them decide themselves whether they want to remove him.

Mr. BLAISDELL. N. R. A. would have the power to remove him.

Senator BLACK. They would?

Mr. BLAISDELL. I think so.

Senator BLACK. Industry is the one that has named him as the secretary.

Senator GORE. Who is N. R. A. now?

Mr. BLAISDELL. The administration of N. R. A., the National Industrial Recovery Board, is the official authority there.

Senator GORE. What is his name?

Mr. BLAISDELL. The Chairman, Senator, is Mr. Richberg.

Senator GORE. Could Mr. Richberg summarily remove this man in New York who has been guilty of this thing?

Mr. BLAISDELL. I would assume that the full board would have that power.

Senator GORE. I want to see if it has been called to their attention, and if it has, and if they have neglected to do that, somebody is guilty.

The CHAIRMAN. Do you know whether it has been brought to the attention of the N. R. A. authorities?

Mr. BLAISDELL. I think not.

The CHAIRMAN. Mr. Whiteley will find out all about it and let the committee know.

Senator CLARK. As I understand, Doctor, this statement that you have just read was by a member of the Consumers' Board of the N. R. A.?

Mr. BLAISDELL. Yes; the question came to us recently, as I stated.

Senator CLARK. So that the matter was within the knowledge of the N. R. A. per se, because the document which you just read was prepared and written and forwarded by an official member of the N. R. A. organization.

Mr. BLAISDELL. This document was prepared. It was a summary report for my use here, and as I said, Mr. Nicholson brought it to our attention in connection with this general subject of uniform bidding and prices.

Senator GORE. How long ago?

Mr. BLAISDELL. In February. At the time he took it to the Federal Trade Commission.

Senator BLACK. Then that is just one of a number of such instances, is it not?

Mr. BLAISDELL. I am using it as an illustration of this basic fact.

Senator CLARK. It is a very pat illustration.

Senator BLACK. You have quite a number of others?

Senator GORE. Did you say basic fact or base fact?

Mr. BLAISDELL. The word is yours, Senator.

The CHAIRMAN. All right, Doctor, proceed.

Mr. BLAISDELL. This is not just a matter of the city of Milwaukee. Mr. Nicholson sent a file which he submitted to the Commission, and I will simply read a few sentences from it. This was from the Bi-Lateral Fire Hose Co. [Reading:]

TO OUR AGENTS. We were virtually compelled to furnish the code authorities with a list of prices of our standard brands of fire hose, which we are supposed to strictly adhere to, and to protect our agents with a profit, we have adopted the following: and then follows the quotations on the various types.

Do not under any consideration sell these brands of hose at less than the prices shown above.

Senator BLACK. Who wrote that letter?

Mr. BLAISDELL. The Bi-Lateral Fire Hose Co. Further:

If you find any deviation from these prices, report it to us at once.

Senator BLACK. Did he say what would be done to him if he did not sell at those prices, in that letter?

Mr. BLAISDELL. He does not state. It is just an instruction to agents.

Senator GORE. Do you know to whom this man in New York, Kunze, to whom he wrote this letter advising them not to supply this Milwaukee company the fire hose which he was furnishing the city? Have you the name?

Mr. BLAISDELL. Apparently not.

Senator GORE. Can you get it?

Mr. BLAISDELL. If it is in the record as submitted to us, yes.

Senator CLARK. He wrote one letter to the city of Milwaukee advising them not to accept the low bid, did he not?

Mr. BLAISDELL. That is in the summary statement.

Senator GORE. I want this if you can get it. I want to get the names of the different concerns to whom the New York man wrote

this letter requesting or advising them not to supply the fire hose to the Milwaukee concern. Then I want to find out from them what they did about it.

Mr. BLAISDELL. I do not believe, Senator, that we have the information. Mr. Nicholson is our source.

Senator GORE. We can find that out, can we not?

The CHAIRMAN. I have instructed Mr. Whiteley, one of our experts here, to get all of this information for us. Both from the Federal Trade Commission and the N. R. A.

Senator BLACK. As a matter of fact, if we had time, we could find a large number of instances like that, could we not?

Senator GORE. Do you know of any others? I would like you to catalog those that you know.

Mr. BLAISDELL. We have plenty of evidence of uniform bids, if that is what you mean, Senator.

Senator GORE. But you do not have any other instances where somebody advised them not to supply the low bidder?

Mr. BLAISDELL. I do not know of any instances, Senator.

The CHAIRMAN. Proceed, Doctor.

Mr. BLAISDELL. The city manager of Oklahoma City writes to the executive director of the United States Conference of Mayors, apparently in reply to an inquiry from Mr. Betters, the executive director [reading]:

> We advertised for 10,000 feet, 68-pound section, wax- and gum-treated fire hose, and the first bids were identical * * * upon readvertising prices were dropped to $1.20 per foot, again being identical * * * in other words it was quite evident that if we had accepted the bids as submitted under the protection of the N. R. A., it would have cost the taxpayers of Oklahoma City $4,000 additional for the 10,000 feet of hose.

You notice the assumption again is that it is under the protection of the N. R. A., but it is again contrary to the fact.

Senator GORE. Does that mean that the second bid was $4,000 less than the first?

Mr. BLAISDELL. That is right. The first was $1.40 and the second was $1.20.

Senator CLARK. What do you mean by saying it is contrary to the fact that it is under protection of the N. R. A? These fellows would not dare to persist in such a brazen manner unless they felt that they had the eagle's wings over them, would they?

Mr. BLAISDELL. I do not assume for a moment, Senator, that the gentlemen who are concerned would maintain that they were doing this under the protection of N. R. A. There is no provision of this kind in the code, and such actions as they have taken are apparently entirely outside of N. R. A.

Senator CLARK. Do you think that a man out in the sticks, say this man Kuehn in Milwaukee, can distinguish between a letter that he gets from the secretary of the code authority in his capacity as secretary of the code authority, and a letter that he gets from the same man as secretary of the Rubber Manufacturers Association in New York? In other words, he is using the club of the N. R. A. and the fact that he is secretary of the code authority with practical power of life and death over individual corporations or individual manufacturers, to do something else—it is possible that he is acting ultra vires, outside of his authority, but nevertheless it is all done under the club of the N. R. A., is it not?

Mr. BLAISDELL. I could not agree with that, Senator.

Senator CLARK. What do you think that Kuehn up in Milwaukee thought when he got this letter threatening him?

Mr. BLAISDELL. I think that he is an intelligent business man who is probably pretty well acquainted with his rights, and I suspect that he recognized the fact, and that is the reason that it was brought to the attention and was called to the attention of the Federal Trade Commission.

Senator CLARK. When Kunze, the secretary of the code authority and also the secretary of the Rubber Manufacturers Association in New York, wrote him, do you know whether Kuehn in Milwaukee could tell whether Kunze was speaking on this side of the table as the secretary of the code authority or on that side of the table as the secretary of the Rubber Manufacturers Association, when he threatened him, as he did very plainly, if he went through with that bid? How was the man out in Milwaukee to distinguish as to what capacity in which Mr. Kunze was writing?

Mr. BLAISDELL. Senator, it seems to me his action indicates clearly that he was aware of the difference, else he would not have taken the action that he did.

Senator CLARK. In what capacity do you think that these other manufacturers that Kunze wrote to and said, "Do not give Kuehn the rubber fire hose to carry out his contract"? Do you think they regarded the communication as being that purely of the secretary of the Rubber Manufacturers Association as distinguished from the secretary of the code authority?

Senator GORE. The right hand had a pretty strong suspicion of what the left hand was doing.

Mr. BLAISDELL. I cannot disagree with you on that at all. The only point I am making is that apparently these gentlemen were acquainted with the fact, even though they may have tried to use the other things, and the other thing that I am trying to make perfectly clear is that there are a great many things that have been done and charged to N. R. A. which are not on their bill.

Senator GORE. Is there anything that N. R. A. could do to prohibit that sort of business?

Mr. BLAISDELL. We made a suggestion here a few moments ago—I believe it was Senator Black's suggestion—that specific authority and necessity should be written into the act to require N. R. A. to deal with such a question and report it immediately.

Senator BLACK. To the Department of Justice.

Senator GORE. As far as it stands now, under the rules and regulations, that sort of thing can go forward and there is nobody to say it nay.

Mr. BLAISDELL. We still have the Department of Justice and the Federal Trade Commission. The N. R. A. has not been interpreted essentially as a body to deal with that type of thing.

Senator BLACK. The N. R. A., if they are down there on the whole trying to protect the public, they certainly ought to have a regulation that requires where there is a manifest open and palpable infraction of the law, that it should be reported to the Department of Justice.

Mr. BLAISDELL. I think so.

Senator GORE. I thought that is what it was for.

The CHAIRMAN. Do you think it proper for the committee to consider the question that if any one on a code authority has exceeded the

law, they should be subject to some penalty? There should be some penalty attached to it?

Mr. BLAISDELL. Yes, sir. I might call attention to one instance, that of the Cotton Garment Code Authority, which apparently acted outside of its authority and was removed by the N. R. A. They were stricken from the books, and the N. R. A. took over itself the direction of the code and required the election of a complete new code authority.

Senator GORE. And they could have done that in this instance?

Mr. BLAISDELL. In this instance, apparently the action was taken outside of N. R. A. and not under actions approved by N. R. A.

Senator BLACK. It is also true that the employees of private companies, either individually or collectively, should not be charged with any duties of enforcing N. R. A. rules and regulations, is it not?

Mr. BLAISDELL. It seems to me that they are public functions.

Senator BLACK. I sent a complaint down for a violation by an oil company of price-fixing down in Alabama, and I had a letter from my friend who made a complaint a week later and said that the representative of the code authority had been over to correct the mistake, and he was the general representative of the Waffut Oil Co., in Atlanta, Ga. Of course, they did not get very far to correct it, because it was an abuse of the Waffut Oil Co. that was complained about.

Senator CLARK. He was hard to convince.

Senator BLACK. They really did not convince him that he had violated the law. [Laughter.] Do you still have down there the system permitting employees of these companies to go out and pass on complaints against the company?

Mr. BLAISDELL. My understanding is, Senator, that when complaints are submitted, that they are referred to a code authority for information. Do you wish to correct me on that, Mr. Edwards?

Mr. EDWARDS. The standard plan for the trades practice committes of the code authority provides that members of the committee who are members of the industry should not sit on cases which are brought where they themselves are principals.

Senator GORE. They are not allowed to sit in judgment of their own case?

Mr. BLAISDELL. Exactly.

Senator CLARK. What does the N. R. A. do, and I am not blaming the Consumers' Board for this practice—what do you do in such a case as Senator Black has stated, where the representative of an interest, or a company, we may say, or an industry, is a very prominent member of the code authority, and under that particular code he has designated the agent of his own company as compliance officer of the code authority in a particular State, which has happened in a great many States and a great many industries. When some independent comes along and gets in a row with the code authority and files a complaint against the company which is represented on the code authority, is there any provision in N. R. A. that such representative of the particular outfit complained against shall not be the one to investigate and pass upon the violation of the code?

Mr. BLAISDELL. Senator, there is a compliance division in the N. R. A. They could probably give you much more detailed information on that.

Senator CLARK. I will be very glad to ask them when I get a chance.

Mr. BLAISDELL. I do not want to dodge the question.

Senator CLARK. I thought you would be able to answer it.

Mr. BLAISDELL. I would also like to add this thought, though, that this is one very good reason why, if there are code authorities, there are any responsibilities given them, they should certainly have public representatives sitting there.

Senator CLARK. That is exactly what we are trying to get at, and we are very happy to have any suggestions along the line of tightening these loopholes and strengthening the operation.

Senator KING. The code authorities would be interested in their industry, would they not?

Mr. BLAISDELL. Of course, Senator. They are representatives of the industry.

Senator CLARK. And sometimes in a predominant faction of the industry against the minority faction?

Mr. BLAISDELL. I assume that cases of that kind have arisen and that it certainly would be part of the function of N. R. A., and I believe they have always interpreted it as such, to protect those minorities wherever possible?

Senator KING. They would not be so acute about the complaints as to price-fixing if they were engaged in price-fixing themselves?

Mr. BLAISDELL. Of course not.

Senator KING. They would be rather disinclined to view with favor the complaints regarding the injustices and unethical practices if they themselves in their industry, and they are the judge and jury in their own industry, were guilty of the same thing.

Senator CLARK. And the sheriff and the executioner.

Senator GORE. If these people in New York, this secretary of this fire hose concern, can get away with this, I can see how certain industries are glad to have the antitrust law suspended and the N. R. A. law substituted in its place to provide that sort of immunity.

Mr. BLAISDELL. I should like to press that I believe no immunity has been granted in this case as the result of the N. R. A.

Senator BLACK. Immunity can be provided just the same by not providing appropriate methods to call it to the attention of the authorities as by an open-blanket immunity.

Mr. BLAISDELL. My point is that there is no immunity under the act.

Senator GORE. This thing has been sent to the Federal Trade Commission. Before it grinds along, a long time will pass. The city has not got its fire hose, and the man that wants to supply it was not able to supply it. There ought to be some practical remedy for that situation, so that people who are acting within the law can act within the law and carry out honest transactions.

Mr. BLAISDELL. Senator, that is exactly the point I have been trying to make, that such authority should be established in any act similar to N. R. A.

Senator GORE. Has this whole N. R. A. business, this whole set-up, been a sort of house of refuge for transactions of this kind, if and when people were disposed to engage in them?

Mr. BLAISDELL. I think that is a pretty general charge. I could not agree with it.

Senator KING. When an industry rushes in, as some of them did, and they were the large units in the various industries, and obtained codes which usually dictated, or they did dictate the machinery which was to be employed in that code, did they not?

Mr. BLAISDELL. In the early days of code writing, those were pretty hectic days, Senator. If you were around in those summer months, you would be well aware of it. I know you were here part of that time. I believe you were conducting an investigation yourself during that time, and certainly a great many things went through in those hectic days that would not go through for a minute today.

Senator KING. Is there any difference now?

Mr. BLAISDELL. I think so, very definitely.

Senator KING. I was told quite recently that a number of individuals who were engaged or who had had garages and were interested in the repair work of automobiles, and so forth, "Now that the getting is good," they said, "let us come in and get a code also." And they came in without any consultation particularly with the thousands of young men and others who were engaged in the repair of automobiles, scattered all over the United States, and they finally got a code, and a Mr. Pulley is secretary. The rest of the people throughout the United States will have nothing to do with the selection of the officials of that code, will they? And if there is any violation of the code—it has been approved only within the past 2 months—they will be the judge and the jury to determine what the situation is, will they not?

Mr. BLAISDELL. Senator, perhaps I can get a little information about that.

Senator KING. I understand they are asking for a large budget, several hundred thousands of dollars, and Mr. Pulley is going to get a $10,000 or $15,000 salary, the same as so many others of those who organized these codes.

Mr. BLAISDELL. Senator, I am very sorry, but we have no information here at hand on this particular case.

Senator CLARK. The formation of all of these codes, Doctor, was originally based upon the same principle that General Forrest said about war, "Getting there fustest with the mostest men"—in other words, a strongly organized industry when they had a strong trade association which might have been gouging the independents in the same industry, rushed in here and said, "Well, we represent the industry", and got a code, set themselves up as the code authority, they got authority from N. R. A. to collect contributions from even the independents for the support of the code authority, and made regulations as they pleased. Is that not about what happened?

Mr. BLAISDELL. Senator, I think N. R. A. has been pretty careful in the matter of representativeness. I think you will also have before you other persons much better informed than I, whom you can question——

Senator CLARK (interrupting). Well, we had testimony before us this week on one code, in which the deputy administrator, Dr. Lindsay Rogers, approved the code which provided—this was an industry in which there were two very bitterly divided factions—which provided that on the code authority the dominant faction should have 10 members, and then the dominant faction should be permitted to appoint 5 members from the other faction, which was exactly like allowing one particular party to name 4 election judges, and then name 2 election judges from the minority party. Was that not rather customary in the early days of the code formation?

Mr. BLAISDELL. I cannot speak from personal knowledge, Senator. At that time I was in the Department of Agriculture.

Senator CLARK. You know, Doctor, from your experience in the Consumers' Board, that a great many very gross injustices did exist in these codes, these early codes, and when I say early codes, I mean the codes which were adopted early in the history of N. R. A., which are still perpetuated, by which a so-called "dominant faction" in an industry was allowed to oppress and gouge a minority faction as well as the consumer?

Mr. BLAISDELL. Our work has been particularly straight, that we have made every effort——

Senator CLARK (interrupting). Understand me. I would like to say this for the record, that I am in no sense criticizing the work of the Consumers' Board. I think it is the most commendable work that has been done in connection with the whole N. R. A., and my objection lies in the fact that the consumers' interest as represented by the Consumers' Board has not been given greater weight in the determination of the policies of the N. R. A. I think in saying that that I express the views of a number of other members of this committee, from what testimony has been heard.

Mr. BLAISDELL. Senator, it has been our attempt to do nothing but press for what we believed were the stated principles of the act. I introduced considerable material in the record to support that particular provision.

Senator CLARK. We thank you for introducing the evidence, Doctor, and it has been very valuable evidence to the committee in our determination of policy.

Senator KING. You have not concluded your statement, have you, Doctor?

Mr. BLAISDELL. I had not.

Senator KING. Proceed.

Mr. BLAISDELL. Do you wish to hear anything further about the fire hose, gentlemen?

Senator CLARK. We would like to hear all we can about the fire hose.

Mr. BLAISDELL. This happened to be from the city of Dallas, also the United States Conference of Mayors, a letter which states [reading]:

All bids have been identical since March 1934; prices are approximately 25 to 50 percent higher since identical bids have been received.

I shall not read the complete letter. I am trying to select significant items.

The city of San Francisco also addressed to Mr. Betters, of the United States Conference of Mayors [reading]:

In answer to your letter of February 20, please be informed that only one bid was received for fire hose during 1934 and all such bids were identical in price.

From the commissioners' office of the city of Chicago [reading]:

Bids were opened for 2½-inch fire hose on June 5, 1934. Sixteen bids were received, all of which were equal, namely 80 cents per foot.

From the city of Flint, Mich. [reading]:

Bids were received from five sources of supply. All quotations were identical.

From the Michigan Municipal League, office of the director [reading]:

We have checked the tests on the hose built prior to the code and that constructed since July 1933, and find that the quality has been uniform throughout, but as you know, the price is practically double.

Senator BLACK. You do not have any figures there to show how much they increased wages?

Mr. BLAISDELL. I am sorry I do not.

Senator BLACK. They probably had to double the price because they raised the price of wages 5 or 10 cents.

Mr. BLAISDELL. Again, from the Michigan Municipal League, also to Mr. Betters [reading]:

With curtailed operating budgets and heavy tax delinquencies, the cities have simply reduced all of their purchases to an absolute minimum and inasmuch as the fire hose prices have practically doubled, they are quietly putting into effect a buyers' strike and will not purchase hose or any other commodity until they are forced to do it.

From the city of Los Angles [reading]:

The city of Los Angeles first received bids on fire hose on December 4, 1934. The prices quoted by all firms were identical and were 54 cents per foot for 1½-inch hose and 82 cents for 2½-inch hose, including couplings.

This is from the Rubber Manufacturers Association, Inc., 444 Madison Avenue, New York City, to Mr. Holm, purchasing agent of the city of Los Angeles, subject: Fire Hose, City of Los Angeles [reading]:

The mechanical divisional code authority feels that an explanation is due you regarding the attitude of our industry with respect to Executive Order No. 6767. As you know, that order permits manufacturers operating under N. R. A. Codes of fair competition to quote governmental agencies not more than 15 percent below prices filed by them pursuant to such codes:

When Executive Order No. 6767 was issued, the mechanical rubber manufacturing industry, including manufacturers of cotton rubber-lined fire hose, recorded its opposition to the application of the order to prices filed under our code, and a formal request for an exemption from the order was submitted to the National Recovery Administration. Pending the final outcome, in view of the expression of the industry on this question, members of the industry are obligated to conform to their filed prices in quoting governmental agencies without according them the benefit of Executive Order No. 6767.

Senator CLARK. Who is this letter signed by?

Mr. BLAISDELL. Mr. Kunze, secretary of the Mechanical Division Code Authority.

Senator CLARK. So that Mr. Kunze, after the President had issued his Executive Order 6767 allowing a tolerance of 15 percent, warned the members of the industry that because a protest had been filed on behalf of the code authority against that Executive order—and that they were warned in the meantime not to regard the terms of the President's order.

Mr. BLAISDELL. That seems to be the fact, Senator.

Senator KING. Proceed.

Mr. BLAISDELL. This is the city of Los Angeles writing to Mr. Walter Cussenhoven, chairman of the Cotton Rubber-Line Fire Hose Division, at 1790 Broadway, New York City [reading]:

In our case, we have already bought approximately $45,000 worth of hose this year. The prices were higher than at any time in the past—even including the boom years of high prices; but considering the industrial recovery problems, they were fair. If we are granted the 15 percent allowed by the President, we will spend an additional $40,000 for hose; otherwise we will buy only when necessity forces us to do so, and then only in small quantities, since the prices would be the same.

I have simply selected material there which seems to me to make a case.

Senator CLARK. I think you have made a very complete case, Doctor, if I may be permitted to observe.

Senator BLACK. Is there any way you can submit that to the directors of the N. R. A. tomorrow?

Mr. BLAISDELL. I think this record can be submitted very easily.

Senator BLACK. As one member of the committee, I would like you to submit it to them, to see whether or not they will submit it to the Department of Justice and seek to establish the fact which has been alleged that they do not tolerate violations of the Sherman Antitrust Law.

Senator CLARK. I heartily concur in that suggestion.

Senator BLACK. If they do not, it would be interesting to know why.

Mr. BLAISDELL. I shall be glad to submit the record as we have it, Senator.

How widespread is this uniform bidding proposition is a question I think there has been interest expressed in; and for that purpose, or for the purpose of indicating that, I would like to submit some other material.

Senator KING. While that is being obtained, may I read an extract from a statement from the Consumers Division of the National Emergency Council at the N. R. A. price hearing, on January 9, 1935? [Reading:]

* * * the official countenancing of some price controls has been used as a pretense by industries for setting up their own price controls elsewhere.

Higher prices for particular commodities have discouraged consumption * * *.

The consumers' option of refusal to buy when prices are not right is not an adequate protection, and when exercised it defeats the purpose of the act to get consumers to buy more goods.

Price fixing does not permit the results of efficient management to be passed on to consumers in the form of lower prices.

In many cases of threatened or actual destructive competition, price fixing has not proved to be a desirable, effective, or practical solution.

* * * * * *

Having the N. R. A. to blame, business men have used it as a pretense for collusion and price raising. An official abandonment of price fixing by the N. R. A. would probably result in an abandonment of a considerable amount of unofficial price fixing by industries which have used the N. R. A. as a cloak, whether there was a code provision or not.

* * * * * * *

A study group in Omaha reports that the code prices for printing its annual program had tripled from the 1933 rates.

* * * * * * *

We have noted a large number of complaints occurring in the paper and printing industries. These complaints take the form generally of very large price increases, increases which could not easily be explained on the basis of rising labor cost, since this industry as a whole was not notorious for labor "sweating" or low-wage rates.

* * * * * * *

There have been a number of instances where consumption has been discouraged as a result of high prices fixed under codes. * * * The manual training department of the Los Angeles schools found it necessary to cut down the work of that department because of the high price of lumber. There are other cases where fixed budgets have meant that higher prices resulted in the reduction of goods which an institution could purchase and thus cut down the amount of employment that the production of these goods would have afforded.

There are other statements in connection with that. I would like to ask you if you are familiar with that situation?

Mr. BLAISDELL. Yes; I was familiar with it. While it was prepared before I was with the Consumers Division, that is a summary statement of reports which came to us from councils scattered over the country, which were and have been used considerably for the purpose of trying to find out information which ought to be valuable to the Recovery Administration, and it was that purpose that was in mind in submitting it. The purpose in submitting it to you was upon your request for information of materials that we had that we felt might be valuable.

Senator KING. At the close of your remarks, so as not to disturb your continuity, this may be inserted as a statement of your organization.

(The portion of the statement which was not read by Senator King is as follows:)

There are many cases where high prices have diverted buyers to an alternative and, perhaps inferior, method of satisfying their wants. Such was the case in De Kalb County, Ga., where the school board found it necessary to defer permanent additions to the schoolhouse because of high costs and decided to construct cheap temporary quarters for their present needs. The report even comes that Harvard University has substituted a cheap paper wrapper for the manila envelop formerly used in mailing its alumni bulletin. There are cases in the reports of individuals deciding to do their own dry cleaning instead of paying the high prices which were set up by the code authorities and which have in many cases persisted. A large Louisville, Ky., hotel established its own printing presses for preparing menus, programs, etc., rather than letting this business to local printers as it did formerly.

* * * * * * *

The fourth conclusion that flows from the evidence we have received is that the consumers' option of refusal to buy does not afford an adequate protection against the undesirable effects of price-fixing provisions. In the first place, it is clear that consumers do have to buy coal, whether the price is reasonable or not. Moreover, this is only one of a number of absolute necessities. The principal point we wish to make, however, is that a refusal to buy means a curtailment of consumption, and this is a poor recourse in a program the affirmed aim of which is to increase the flow of goods and services into the hands of consumers. A number of statements cite cases where consumers, fully intending to build houses (their intention being evidenced by the facts that plans were drawn and bids sought) changed their minds when they learned that the over-all cost had increased approximately 25 percent above the precode level and that the bids received were practically identical. Here is the sort of statement received, illustrated by one from Ames, Iowa:

"An individual was interviewed who would like to build a house in the near future; he states that he and two others who have the like desire are unlikely to build during the coming year because of conditions due to the codes. Identical figures in bids submitted prove that monopoly has replaced competition. This is said to be enforced by the authority given to a body in Des Moines to throw out all bids which seem to them too low. Furthermore, if an individual rejects all bids, he is not allowed to call for resubmission within 90 days. Since a delay of this length is often out of the question, he may be forced to pay the price demanded by the monopoly."

Price fixing does not permit the results of efficient management to be passed on to consumers in the form of lower prices.

It is a very serious consequence of price fixing that it does not permit the savings of efficient management to be passed on to consumers in the form of lower prices. Cases illustrating this point vary all the way from the restriction upon the college bookstore which wanted to sell books to students on a nonprofit basis to the numerous cases where dealers have definitely expressed their willingness to sell at lower prices if the code would permit it, such statements being generally accompanied by a declaration that an entirely satisfactory profit would result from these lower prices.

* * * * * * *

Some efficient dealers have admitted that higher profits have not been brought about by price fixing, since the higher mark-up is accompanied by a smaller volume of sales. While from a profits point of view this makes little difference to them,

they feel that consumers are getting less than they should for their money, and they would, therefore, prefer to sell at lower prices than the code provides.

Mr. BLAISDELL. That was a public statement of the Consumers Division. It is not a statement of the Consumers Advisory Board. It was simply a summary of this information that had come to us.

Senator KING. Yes. Proceed, Doctor.

Senator BLACK. Is it a fair statement of that issue or circular which has just been read by Senator King, that it is your judgment and the judgment of those protecting the consumer that about the most important thing this committee can do in addition to wages and hours is to try to protect the public from unfair and unjust practices?

Mr. BLAISDELL. I would accept that statement wholeheartedly, Senator.

Senator BLACK. You think it is important for us, then, to adopt legislation to protect the public from unjust and unfair practices and profits as it is to try and protect a few industries against what they call unjust and ruthless competition.

Mr. BLAISDELL. You might have quoted the act, Senator. I think the term is "destructive competition."

Senator BLACK. I do not care what it is. From your experience, I will ask you if the public has not suffered far more from unfair practices brought about since these codes started than it has, in your judgment, from any so-called "destructive competition", either before or since?

Mr. BLAISDELL. I think that probably there has been more hardship caused than there has been by destructive price-cutting. I think destructive price-cutting is a very misleading term.

Senator KING. Proceed.

Mr. BLAISDELL. I have a memorandum here which is called "Suggestions for code revision from the Consumers Advisory Board", and they were contained in a memorandum to General Johnson of February 19, 1934.

Senator KING. Those were embodied in a report which is entitled "Appendices to memorandum submitted to General Johnson?"

Mr. BLAISDELL. Yes; that is the appendix, and it is to this report that you have in your hands.

Senator KING. And that shows, in appendix A, examples of uniform bids?

Mr. BLAISDELL. Yes, sir.

Senator KING. Were you going to comment upon this report?

Mr. BLAISDELL. I was only going to comment on it to this extent, that we were talking about the problem of the extent to which uniform bidding had become a serious problem, and this was the material that had come to us, which indicated to us that it was very widespread, and that it was something that needed to be dealt with very shortly, and it was our endeavor at that time to push it further. I am not sure but what some of this very material was partly responsible eventually for the issuing of the Executive Order No. 6767 which permitted the bidding below filed prices.

Senator KING. Were you going to challenge attention to some of the figures which were shown here, for instance, the examples of uniform bids in portland cement, 11 bids, and 8 identical; 17 bids and 15 identical; 16 bids and 13 identical; 15 bids and 15 identical. Chemicals, showing the identical bids there; great numbers of them.

Electrical equipment and supplies, envelops, ice, lumber, and building.

Were you going to comment upon those?

Mr. BLAISDELL. I was not going to comment upon them, Senator, beyond the suggestion I have already made. I think they speak for themselves sufficiently.

Senator KING. Appendix B contains lists of approved codes which contain provisions leading directly or indirectly to artificially raised prices. The lists cover the first 180 approved codes. I am calling attention to this report.

Mr. BLAISDELL. Again the records speak for themselves, I think, Senator.

Senator KING. Eighty codes provide for open prices with a waiting period. That is correct, is it not?

Mr. BLAISDELL. Yes, sir.

Senator KING. It mentions iron and steel, cast-iron soil pipe, and many others, 80 codes. Nine codes provide for open prices without waiting period. Codes containing provisions against selling below cost, and it gives a large number there. And costs defined as a combination of individual concerns, and average cost. Cost defined and cost of individual concerns—65 in that category. Members of industries permitted to sell either at individual costs or at price necessary to meet competition, 45 codes.

Codes providing for restrictions upon installation of new machinery or other classification of industry capacity, 29 codes; codes providing for allocation of production, 4, lumber and timber, petroleum, iron and steel, and glass containers; codes providing for restriction of machine hours, 29; codes with basing point system, 7; codes with zoning system, 6; codes with freight equalization and other systems of delivered prices, 33, and among them are funeral supplies; codes providing for fixed price differential between different classes of customers, 23; codes providing for resale price maintenance, 16; codes providing for some degree of price determination by the President, code authority, or other agency, 17; codes permitting code authority to establish price differentials, 6.

Mr. BLAISDELL. Senator, I think it is quite fair to state that a great many of these are a summary of the provisions as the codes read, that the codes also contain in a great many cases, provisions that these items shall not go into effect without some previous action by N. R. A. and I know that in a great many cases they have not been permitted to go into effect.

The exact status of that, I could not supply you with the information at this time. Undoubtedly the Division of Research and Planning or Mr. Henderson when he is here, can give you much more detailed information on that.

Senator BLACK. What would be your idea or suggestions to protect the public from these bids when they are identical?

Mr. BLAISDELL. As I said before, the problem existed even before——

Senator BLACK (interrupting). Undoubtedly. On cement, for instance.

Mr. BLAISDELL. The only way that I know of is when you have got a monopoly is to have a public authority that has the power to deal with those practices.

Senator BLACK. Deal with the prices and profits, and so forth?

Mr. BLAISDELL. Yes, sir.

Senator BLACK. As I understand it, everybody that has testified here has said that they want to preserve the antitrust law so as to prevent monopolies. I think everybody is agreed on that. Suppose we put in a little amendment to the Sherman antitrust law that whenever bids are identical, that shall be prima facie evidence of guilt of violating the antitrust laws? Do you think that would have a good effect? Do you think then that bids would all be the same?

Mr. BLAISDELL. I suppose there would be technical ways around it, where your bids can vary only slightly, and so slightly that it would not mean a material difference. The important question would be the level of the price, and that is one of the difficulties when we step in to prohibit price fixing. If we mean price fixing by a private agency without control, you get it one way. If you have price fixing by a public agency, the probabilities are getting it the other way.

Senator BLACK. I suppose it gets back to the statement which I entered upon the record the other day in which I quoted from Adam Smith, where he said that if you let business people get together on any subject, even for social diversion, the chances are very great that they will form a conspiracy against the public on prices. That is what it gets back to.

Mr. BLAISDELL. There seems to be a great deal of truth in that statement.

Senator BLACK. And your experience led you to believe that he was probably correct in that statement?

Mr. BLAISDELL. Yes; we have given a good deal of evidence to support that position.

Senator BLACK. Do you see any way to regulate these cement people if they are going to object to competition themselves and not regulate prices and profits or salary and bonuses, but by actual honest competition with others in the business—do you see any other way to regulate them except for the Government to step in and fix their profits and fix their bonuses and salaries?

Mr. BLAISDELL. I think the Consumers' Board is on record in the material that we put into the record already indicating our agreement with you on that particular point.

Senator BLACK. When I say that, I understand that competition is not only supposed to regulate prices, but it regulates the expenses of the business, because if they have to compete and sell at a low price, they cannot pay more than is necessary, or right and fair, for the bonuses and salaries and profits. That is correct, is it not?

Mr. BLAISDELL. Yes, sir.

Senator BLACK. Competition, in other words, regulates it. But where they step in and deliberately destroy the competitive system, have they a right to complain when we say we are not going to let them gouge the public by these prices?

Mr. BLAISDELL. That is essentially the position that I have been taking.

Senator BLACK. I want to be absolutely clear. You take the position that you prefer competition if we can have it?

Mr. BLAISDELL. Yes, sir.

Senator BLACK. But if we cannot have competition, the public is entitled to protection by taking that industry and demanding by laws that they shall not gouge the public, even if it is necessary to

limit their profits and limit their expenses and put investigators in every business that has destroyed competition in that way.

Mr. BLAISDELL. As an expression of personal opinion, Senator, I will agree with you.

Senator KING. Doctor, that report shows, does it not, and do you agree with it, that there are 89 industries that have open-price systems provided and sanctioned in the codes?

Mr. BLAISDELL. With the suggestion I made previously, that a great many of those have not been permitted to go into effect.

Senator KING. The open-price systems of this type, have they not been condemned by the Supreme Court as monopolistic practices in violation of the antitrust law?

Mr. BLAISDELL. I am not sufficiently well acquainted, Senator, with any decisions of the courts that turn specifically on these points. I did my best to summarize what I understood the position of the court to be in the previous statement that I made on the open-price systems.

Senator KING. Have you gathered any information of coercion, or other efforts to keep the open price uniformly high?

Mr. BLAISDELL. Yes, sir.

Senator KING. And that information shows affirmatively that there have been efforts, coercive, or others, to keep open prices uniformly high?

Mr. BLAISDELL. Senator, you use the word "evidence." I assume that you mean such material as may have come to us?

Senator KING. Yes.

Mr. BLAISDELL. I doubt if a good deal of the information which we have could be properly accepted as evidence. It is ex parte and it might be convincing to me. At the same time, I would not dignify it legally as evidence.

Senator KING. Well, I will use the word "information." Have you gathered information?

Mr. BLAISDELL. I expressed my judgment; yes.

Senator KING. Has the open-price system under the codes been used as a device to fix prices? I think you have answered that.

Mr. BLAISDELL. I think so.

Senator KING. Have you gathered any information tending to show the uniformity of bids in various industries, and the extent of uniformity? By that I mean the number of industries in which there was uniformity.

Mr. BLAISDELL. We have submitted such information as came to us, Senator. In dealing with the open-price problem, we also prepared a statement which I believe is in your hands on the functioning of the open-price systems. I can put that in the record or I can take it and comment on it.

Senator KING. I have not seen it, Doctor. I think it would be a good idea to put it in the record. I have been asked to have placed in the record the report from which I read.

(The report just mentioned will be found at the close of today's session.)

Mr. BLAISDELL. I have a copy, Senator, which was not submitted to you, as I formerly stated. It is labeled, "Experience with open-price provisions of approved codes", by various members of the staff of the Consumers' Advisory Board, and, if you wish, we can put it

in the record. There is also an appendix to that with the materials which were used in that connection.

Senator KING. This one (noted above) will go into the record. Examine these others during the recess, and if you have covered it during your testimony we will not encumber the record, but if not, when you come back on Monday we will insert it in the record.

We have had rather a long day, and we will recess now.

Tomorrow morning at 10 o'clock, and the committee will meet in the committee room, and Mr. Robert W. Irwin will appear, also Albert Ettinger.

At 2 o'clock Monday afternoon, you will kindly return, Dr. Blaisdell and complete your statement.

(Whereupon, at 5 p. m., the committee recessed until Saturday, Mar. 30, 1935, at 10 a. m.)

(The following report is in connection with the testimony of Mr. Blaisdell.)

APPENDIXES TO MEMORANDUM SUBMITTED TO GENERAL JOHNSON ON FEBRUARY 19 BY CONSUMERS' ADVISORY BOARD

FOREWORD

When this report was submitted, only preliminary analyses of code provisions were available, as is stated on page 4 of the report. Further analyses and interpretations of doubtful cases since that time have made a few changes in the lists of codes containing various types of provisions. These appendixes have been corrected accordingly, and therefore the number of codes listed in appendix B do not correspond exactly with the summaries on pages 3 and 4 of the original report.

Later information also indicates that because of increases in cost unaccompanied by further price increases the rayon industry no longer should be included in the list on page 3.

APPENDIX A. EXAMPLES OF UNIFORM BIDS

CEMENT

Portland cement, 11 bids, 8 identical; 17 bids, 15 identical; 16 bids, 13 identical; 15 bids, 15 identical. Five identical bids.

CHEMICALS

Soda ash, 9 identical bids; dry lime sulphur, 2 identical bids; calcium arsenate powder, 2 identical bids; arsenate of lead, 2 identical bids; liquid chlorine, 3 uniform bids, cash discount varied; 4 uniform bids, cash discount varied; anhydrous chloride, 10 bids, 8 identical; anyhdrous ammonia, 7 bids, 4 identical; ethyl alcohol, 5 identical bids.

ELECTRICAL EQUIPMENT AND SUPPLIES

Dry cells, 10 bids, 6 identical; electrical material, miscellaneous, 3 bids, 2 identical; switches, Y contractors, 13 bids, 7 identical; switch hooks, 11 bids, 6 identical; electrical equipment, 32 items, 4 bidders, all bids identical; electrical equipment, buzzers, 5 bidders, 3 bids identical; fuses and links, 6 items, 2 bidders, all bids identical; incandescent lamps, 9 bidders, 8 bids identical; fuse links, 14 bidders, 10 identical bids; fiber conduit, 5 bidders, 5 identical bids; conduit, rigid black, 10 bidders, 6 bids identical; electrical supplies, miscellaneous 27 items, 3 bidders, identical on 24 items; plug fuses, 7 bidders, 4 identical on 24 items; link fuses, 3 bidders, 3 identical on 24 items; electric fixtures, miscellaneous, 7 bidders, 5 identical on 24 items.

Switch gear equipment, 2 bidders, identical bids; regulators, 2 identical bids; compensators, 4 bids, all identical; roundels, 9 identical bids, third bid 2 cents higher; outer globes, 3 bidders, 2 identical; midget electrical sets decalcomanias, 2 identical bids, third bid 2 cents higher; electric welder, three capacities, 5 bidders, all bids identical; deaerating feed water heaters, 5 bidders, all bids identical; supervisory control equipment, 2 identical bids; insulated cord, 16

identical bids; fibre insulation, 5 identical bids; insulators, 7 bids, 3 identical; wire, no. 12 duplex R. C., 10 bidders, all bids identical; copper wire, 6 bidders, all bids identical; insulated wire, 20 bidders, 17 identical; copper wire, 10 bidders, 8 identical; switchboard wire, 15 identical bids; trolley wire, 4 bids, all bids identical; steel cable 7 items, 6 bidders, all bids identical; cable, 3 items, 9 bidders, 8 bids identical; armored cable, 15 bidders, all bids identical; submarine armored cable, 8 identical bids.

Electric cable, 3 identical bids; insulated cable no. 1, 12 identical bids; insulated control cable, 12 identical bids; street lighting cable, all identical bids; varnish, cambric and lead cables, 5 items, 9 bidders, all bids identical; steel tape cable, 3 bidders. all bids identical; lead covered and steel taped cable, 13 items, 10 bidders, 9 bids identical; cable transmission system, 6 identical bids; friction tape ¾-inch, 10 bidders, 7 bids identical.

ENVELOPS

Envelops, 4 bidders, all bids identical; 4 bidders, 3 identical bids; all bids identical.

ICE

Ice, all bids identical; identical code prices; 2 bidders, all bids identical; 4 bidders, all bids identical.

LUMBER AND BUILDING MATERIALS

Red building brick, 6 bidders, all bids identical; sewer brick, 8 bidders, 6 bids identical; fire clay, 16 bidders, 10 bids identical; lime, 9 bidders, 8 identical bids.

Hydrated lime, 17 bidders, 16 identical bids; finishing lime, 16 bidders, 13 identical bids; ground burned lime, 4 bidders, all identical bids; molding plaster, 15 bidders, 14 identical bids; cedar poles, 6 items, 10 bidders, 6 identical bids.

MACHINERY AND TOOLS

Automobiles, 3 bidders, all bids identical with uniform trade-in allowances; pneumatic drills, 4 identical bids; pneumatic hammers, jackhammer drills, 6 bidders, 5 identical bids from all companies; twist drills, 10 bids, 9 identical; 10 bids, 10 identical; bulldog wrench hobs, 4 bidders, 3 identical bids; road machinery, roller, 2 bidders, all bids identical; road machinery, tractors and graders, 4 bidders, all bids identical; spades, 3 bidders, 2 identical; lift trucks, 5 bidders, all bids identical; stillson wrenches, 15 bidders, 6 identical.

OFFICE FURNITURE AND SUPPLIES

Steel files, 12 bidders, 6 identical bids; 7 bidders, 7 identical bids; steel lockers, identical prices quoted; 7 bidders, 5 identical bids.

Metal shelving, 7 bidders, 2 identical bids, others slight variation; 2 bidders, all bids identical; 7 bidders, 7 bids practically identical; 7 bidders, 2 bids identical, others slight variation; 7 bidders, 4 identical bids; 7 bidders, 4 identical bids; 9 bidders, 7 identical bids; 9 bidders, 7 identical bids; drawing tables, 3 bidders, 2 identical bids.

OIL AND FUEL

Coal, bituminous, 6 bidders, 5 identical bids; gasoline, 3 grades, 6 bidders, all identical bids; bunker fuel oil, 7 bidders, all identical bids; creosote oil, 4 bidders, 2 identical; quinching oil, 3 bidders, all identical bids; swabbing, slushing, and machine oils, 3 bidders, all identical within one-half cent.

PAPER AND PAPER PRODUCTS

Paper bags, 4 companies, identical quotations; all companies quote identical prices; packing boxes, 3 companies, quotations practically identical; paper cartons, uniform price list; corrugated containers, 3 companies, quote identical prices; paper napkins, uniform price list; book paper, 8 bidders, all identical bids; all identical bids; paper, 4 companies, quote identical prices; book paper, uniform price list; paper, 4 companies, quote identical prices; 5 companies, quote identical prices; book paper, uniform price list; paper, 4 companies, quote identical prices; 4 companies, quote identical prices; all companies in State quote identical prices; sulphite bond paper, all companies in city quote identical prices; shipping tags, 5 bidders, 5 identical bids; paper towels, 5 bidders, 5 identical bids; all bids identical.

PLUMBING FIXTURES AND SUPPLIES

Miscellaneous roughing-in plumbing materials, 7 bidders, all identical bids; 2 bidders, all identical bids; plumbing fixtures, 26 items 2 bidders, all identical bids; plumbing supplies, 152 items 5 bidders, all identical bids; 8 items 9 bidders, all identical bids; miscellaneous plumbing supplies, 6 companies, all identical bids; water closets, 8 bidders, all identical bids; 11 bidders, all identical bids; lavatories, 8 bidders, all identical bids; 11 bidders, all identical bids; vitrified sewer pipe, 10 bidders, 9 identical bids; radiation, 4 bidders, all bids identical.

RUBBER

Rubber tires and tubes, 5 bidders, 5 identical bids; rubber fire hose, 11 bidders, 10 identical bids; rubber-lined fire hose, 8 bidders, 7 identical bids; rubber erasers, 10 bidders, 6 identical bids; rubber tires, 5 bidders, 5 identical bids.

SCIENTIFIC APPARATUS

Scientific apparatus, 3 bidders, 3 identical bids.

STEEL AND FABRICATED METAL PRODUCTS

Reinforcing bars, 5 bidders, 4 identical bids; reinforced steel deformed bars. 25, 5 bidders, 4 identical bids.

Round deformed steel bars, 22 bidders, all identical bids; steel beams, 2 bids, 2 uniform; bolts, 8 bidders, 7 identical bids; machine and carriage bolts and nuts, 6 bidders, 3 identical bids; brake spider castings, 5 patterns, 3 quantities, 6 bidders, all identical bids; hoist chain, 14 bidders, 11 identical; galvanized steel conduit, 14 bidders, 12 identical; steel conduit, 18 bidders, 11 identical; dredge chain, 9 bidders, 5 identical; steel drums, 10 bidders, all bids virtually identical; chain-link fencing, 9 bidders, all bids identical; fence, 7 bidders, 6 identical bids; cyclone chain link fence, 6 bidders, 4 identical bids; cast-iron fittings, 3 bidders, 2 identical bids; miscellaneous durham fittings, 11 companies, all identical; railway fittings, 10 bidders, 6 identical; gratings and treads, 9 bidders, 7 identical; nails, 2 varieties, 8 bidders, 7 identical; nails, finishing, 6 bidders, 3 identical bids; steel pans, 3 bidders, 2 identical bids, 1 practically identical.

Pig iron, 6 bidders, 3 identical; pig lead, 2 bidders, 2 identical bids; steel rails, identical bids; steel rivets, 10 bidders, 9 identical; black steel pipe, 14 bidders, 12 identical bids; black wrought-iron pipe, 14 bidders, 10 identical bids; black pipe, 7 bids, 6 identical, 1 practically; pipe and fittings, 20 items, 12 bidders, all identical bids; 24 items, 13 bidders, 12 identical bids all items, 1 practically; C. I. water pipe and fittings, 4 items, 9 bidders, all identical bids; pipe, galvanized, 24 bidders, 19 identical; miscellaneous galvanized pipe, 13 bidders, 12 identical, 1 practically; galvanized steel pipe, 6 sizes, 14 bidders, 12 identical; galvanized steel pipe, plumbing, 13 bidders, all identical bids; galvanized steel pipe, 12 bidders, 11 identical bids; galvanized wrought-iron pipe, 6 sizes, 14 bidders, 10 identical bids; wroguht-iron pipe, 14 bidders, 10 identical; miscellaneous soil pipe, 14 bids, 13 identical bids; zinc plate, 5 bids, 4 identical bids; leaf springs, 2 bidders, all bids identical.

Steel, 9 items, 4 bidders, all bids identical; steel, reinforcing, 14 bidders, 10 identical; cold-rolled steel, 4 bidders, all bids identical; 13 bidders, 12 identical bids; reinforcing steel, 5 bidders, 4 identical, 1 practically; reinforcing iron and tool steel, 8 bidders, all bids identical; structural steel, 7 bidders, 6 identical, 1 practically so; 2 bidders, 2 identical; boiler tubes, 6 bidders, 5 identical, 1 practically so; gate valves, 12 bidders, 6 identical bids; spring washers, 9 bidders, 8 identical bids; steel wheels, 2 varieties, 5 bidders, 5 identical bids; wire attachments for use on docket covers, 3 bidders, 2 identical.

MISCELLANEOUS

Paper clips, 4 bidders, 2 identical; book cloth, 7 bidders, 6 practically identical; dies, all bids identical; pipe dies, 4 bidders, 3 identical bids; Washington finish, 16 bidders, all bids identical; fire extinguishers, 9 bidders, all bids identical; fire extinguisher charges, 7 bidders, 5 identical bids; fire extinguisher system, 5 bidders, 5 identical bids.

Flashlights, 5 bidders, 3 identical; leather harness, 4 bidders, 2 identical; black vellum muslin, 3 bidders, all bids identical; general writing pencils, 8 bidders, 4 bids identical; red-head pencils, 10 bidders, 6 identical; lettering pens, all

bids identical; printing, 50 bidders, all bids identical; hard fibered wall, 15 bidders, all bids identical; mesh linen webbing, 6 bidders, 6 identical.

NOTE.—The above classification is purely arbitrary. No attempt has been made to identify particular products with the codes having jurisdiction over them. There has been included in the list only those examples of uniform bidding in which supporting evidence is available. General claims of "uniform prices", "collusive price fixing", "price agreements", etc., have been excluded, as well as repeated references to products, such as oil, lumber, cement, coal, steel, etc., for which prices are generally uniform.

APPENDIX B. LISTS OF APPROVED CODES CONTAINING PROVISIONS LEADING DIRECTLY OR INDIRECTLY TO ARTIFICIAL DETERMINATION OF PRICES

(Lists cover first 180 approved codes)

EIGHTY CODES PROVIDING FOR OPEN PRICES WITH A WAITING PERIOD

(4) Electrical; (6) lace manufacturing; (11) iron and steel; (18) cast-iron soil pipe; (20) salt producing; (25) oil burner; (26) gasoline pump manufacturing; (31) lime; (34) laundry and dry-cleaning machinery manufacturing; (39) farm equipment; (43) ice; (54) throwing industry, amendment no. 1; (55) compressed air; (56) heat exchange; (57) pump manufacturing; (58) cap and closure; (59) marking devices; (61) industrial supplies and distributors trade.

(62) Steel tubular and firebox boiler; (67) fertilizer; (68) road-machinery manufacturing; (70) gas cock; (73) hair and jute felt; (75) canning and packing machinery; (76) rock-crusher manufacturing; (77) crown manufacturing; (78) Nottingham lace curtain; (80) asbestos; (81) copper and brass mill products; (82) steel casting; (84) fabricated metal products, Supp. Nos. 1, 2, 3, 4; (85) American petroleum equipment industry and trade; (86) toy and playthings; (88) business furniture, storage equipment, and filing supply; (90) funeral supply; (92) floor and wall clay tile manufacturing; (96) buff and polishing wheel; (98) fire-extinguishing appliance manufacturing; (99) asphalt shingle and roofing; (102) shovel, drag line, and crane; (103) machine tool and forging machinery; (107) ladder; (108) motor fire-apparatus manufacturing.

(109) Crushed stone, sand and gravel, and slag; (112) all-metal insect screen; (113) limestone; (114) scientific apparatus; (115) wood plug; (116) mopstick; (117) gear manufacturing; (120) paper and pulp; (123) structural clay products; (126) chinaware and porcelain manufacturing[1]; (127) reinforcing materials fabrication; (128) cement; (129) radio broadcasting; (130) precious jewelry; (131) pipe-nipple manufacturing; (133) concrete masonry; (136) vitrified clay sewer pipe manufacturing; (146) excelsior and products; (148) pyrotechnic manufacturing; (149) machined waste manufacturing; (150) asphalt and mastic tile; (153) valve and fittings manufacturing; (154) metal tank; (156) rubber manufacturing; (157) hair-cloth manufacturing.

(158) Stone-finishing machine and equipment; (159) dry- and polishing-mop manufacturing; (166) wax paper; (167) set-up paper-box manufacturing; (168) refractories; (170) grinding wheel; (171) rolling steel door; (172) rayon and silk dyeing and printing; (173) smelting brass and bronze; (174) rubber-tire manufacturing; (175) medium- and low-priced jewelry manufacturing; (176) paper-distributing trade.

CODES PROVIDING FOR OPEN PRICES WITHOUT A WAITING PERIOD

(23) Underwear and allied products; (27) textile bag; (33) retail lumber, lumber products, building materials, and building specialties; (37) builders' supplies trade; (66) motor bus; (104) liquefied gas; (134) gas appliances and apparatus; (137) warm-air furnace manufacturing; (147 motor-vehicle storage and parking trade.

CODES CONTAINING PROVISIONS AGAINST SELLING BELOW COST—COST DEFINED AS AVERAGE FOR INDUSTRY (3)

(135) Cigar container; (31) lime; (9) lumber and timber products.

COST DEFINED AS COMBINATION OF INDIVIDUAL CONCERN'S AND AVERAGE COST (3)

(37) Builders' supplies trade; (33) retail lumber products, etc.; (123) structural clay products.

[1] Open prices apply only to vitrified hotel china.

COST DEFINED AS COST OF LOWEST COST REPRESENTATIVE MEMBER OF THE INDUSTRY OR AS A "FAIR AND REASONABLE" OR "ALLOWABLE" COST (9)

(146) Excelsior and excelsior products; (98) fire-extinguishing appliance manufacturing; (113) limestone; (132) malleable iron; (69) millinery and dress-trimming braid and textile; (147) motor-vehicle storage and parking; (162) refractories; (171) rolling steel door; (156) rubber manufacturing.

COST DEFINED AS COST OF INDIVIDUAL CONCERN (65)

(138) Antifriction bearing; (105) Automotive parts and equipment manu facturing; (5) automatic sprinkler; (65) advertising specialty manufacturing; (47) bankers; (97) buffing and polishing composition; (96) buff and polishing wheel; (88) business furniture, storage equipment, and filing supply; (7) corset and brassiere; (75) canning and packing machinery; (18) cast-iron soil pipe; (40) electric storage and wet primary battery; (90) funeral supply; (13) fishing tackle; (161) fur dressing and fur dyeing; (70) gas cock; (26) gasoline pump manufacturing; (36) glass container; (157) hair cloth manufacturing; (16) hosiery; (53) handkerchief; (173) industry engaged in smelting and refining of secondary metals into brass and bronze alloys in ingot form; (61) industrial supplies and distributors trade.

(43) Ice; (32) knitting, braiding, and wire covering machine; (87) leather and woolen knit glove; (34) laundry and dry cleaning machinery manufacturing; (104) liquefied gas; (42) luggage and fancy leather goods; (94) men's garter, suspender, and belt manufacturing; (46) motor-vehicle retailing trade; (59) marking devices; (22) motion-picture laboratory; (15) men's clothing; (116) mopstick; (108) motor fire apparatus manufacturing; (149) machined waste manufacturing; (154) metal tank; (103) machine tool and forging machinery; (165) nonferrous foundry; (79) novelty curtains, draperies, bedspreads, and novelty pillow; (25) oil burner; (10) petroleum; (71) paint, varnish, and lacquer manufacturing; (148) pyrotechnic manufacturing; (106) printer's rollers.

(76) Rock crusher manufacturing; (68) road machinery manufacturing; (172) rayon and silk dyeing and printing; (122) special tool die and machine shop; (158) stone finishing machinery and equipment; (167) set-up paper box manufacturing; (2) shipbuilding and ship repairing; (48) silk textile; (83) soap and glycerine manufacturing; (62) steel tubular and firebox boiler; (27) textile bag; (35) textile machinery manufacturing; (51) umbrella; (23) underwear and allied products; (125) upholstery and drapery textile; (140) waterproofing, dampproofing, calking compound, etc.; (163) wholesale automobile trade; (93) washing and ironing machine manufacturing; (19) wall paper manufacturing.

MEMBERS OF INDUSTRIES PERMITTED TO SELL EITHER AT INDIVIDUAL COST OR AT PRICE NECESSARY TO MEET COMPETITION (45)

(50) Asbestos; (112) all-metal insect screen; (150) asphalt and mastic tile; (99) asphalt shingle and roofing; (128) cement; (126) chinaware and porcelain manufacturing; (55) compressed air; (133) concrete masonry; (109) crushed stone, sand and gravel, and slag; (159) dry and polishing mop manufacturing; (4) electrical manufacturing; (179) electrotyping and sterotyping; (84) fabricated metal products manufacturing and metal finishing and metal coating; (39) farm equipment; (67) fertilizer; (92) floor, and wall clay tile manufacturing; (145) furniture manufacturing; (134) gas appliances and apparatus; (117) gear manufacturing; (170) grinding wheel; (73) hair and jute felt; (110) hardwood distillation; (56) heat exchange; (164) knitted outerwear.

(107) Ladder manufacturing; (175) medium- and low-priced jewelry manufacturing; (78) Nottingham lace curtain; (120) paper and pulp; (176) paper distributing trade; (85) petroleum equipment; (180) photoengraving; (131) pipe nipple manufacturing; (57) pump manufacturing; (retail drug); (60) retail trade; (142) retail jewelry trade; (156) rubber manufacturing; (114) scientific apparatus; (177) silverware manufacturing; (86) toy and playthings; (136) vitrified clay sewer pipe manufacturing; (137) warm air furnace manufacturing; (178) watch case manufacturing; (166) waxed paper; (115) wood plug; (20) salt.

CODES PROVIDING FOR RESTRICTION UPON INSTALLATION OF NEW MACHINERY OR OTHER EXTENSION OF INDUSTRY CAPACITY (29)

(1) Cotton textile; (6) lace manufacturing; (11) iron and steel; (16) hosiery; (27) transit; (28) textile bag; (36) glass container; (43) ice; (54) throwing; (66) motor bus; (67) fertilizer; (82) steel casting; (92) floor and wall clay tile; (99)

asphalt, shingle, and roofing; (110) crushed stone, sand and gravel and slag; (174) rubber tire manufacturing; (111) air transport; (113) limestone; (118) cotton garment; (120) paper and pulp; (128) cement; (123) structural clay products; (146) excelsior and excelsior products; (147) motor vehicle storage and parking; (148) pyrotechnic manufacturing; (149) machined waste manufacturing; (156) rubber manufacturing (2 divisions); (168) refractories; (172) rayon and silk dyeing and printing.

CODES PROVIDING FOR ALLOCATION OF PRODUCTION (4)

(9) Lumber and timber; (10) petroleum; (11) iron and steel; (36) glass container.

CODES PROVIDING FOR RESTRICTION OF MACHINE HOURS (29)

(1) Cotton textile; (3) wool textile; (5) coat and suit; (6) lace manufacturing; (7) corset and brassière; (9) lumber and timber products; (15) men's clothing; (16) hosiery; (18) cast-iron soil pipe; (23) underwear and allied products; (27) textile bag; (38) glass container; (48) silk textile; (43) ice; (53) handkerchief; (54) throwing; (78) Nottingham lace curtain; (79) novelty curtain draperies, bedspreads and novelty pillow; (119) newsprint; (118) cotton garment; (120) paper pulp; (125) upholstery and drapery textile; (135) cigar container; (149) machined waste manufacturing.

(157) Hair cloth; (164) knitted outerwear; (166) wax paper; (172) rayon and silk dyeing and printing; (175) medium and low-priced jewelry.

CODES WITH BASING POINT SYSTEM (7)

(18) Cast-iron soil pipe; (128) cement; (11) iron and steel; (31) lime; (9) lumber and timber products; (168) refractories; (127) reinforcing materials fabricating.

CODES WITH ZONING SYSTEM (6)

(88) Business furniture, storage equipment and filing supply; (67) fertilizer; (9) lumber and timber products; (10) petroleum; (20) salt producing; (102) shovel, dragline and crane.

CODES WITH FREIGHT EQUALIZATION AND OTHER SYSTEMS OF DELIVERED PRICES (33)

(99) Asphalt shingle and roofing.

(24) Bituminous coal; (37) builders supplies trade; (126) chinaware and porcelain manufacturing; (135) concrete masonry; (109) crushed stone, sand and gravel and slag; (159) dry and polishing mop manufacturing; (40) electric storage and wet primary battery; (39) farm equipment; (13) fishing tackle; (90) funeral supply; (145) furniture manufacturing (amendment); (70) gas cock; (36) glass container; (110) hardwood distillation; (43) ice; (6) lace manufacturing; (107) ladder manufacturing; (34) laundry and dry cleaning machinery manufacturing; (104) liquefied gas; (132) malleable iron; (108) motor fire apparatus; (71) paint, varnish, and lacquer manufacturing; (120) paper and pulp.

(63) Plumbago crucible; (148) pyrotechnic manufacturing; (68) road machinery; (171) rolling steel door; (51) umbrella; (153) valve and fittings manufacturing; (136) vitrified clay sewer pipe manufacturing; (19) wall paper manufacturing; (140) waterproofing, dampproofing, caulking compounds, and concrete floor treatments manufacturing.

CODES PROVIDING FOR FIXED PRICE DIFFERENTIALS BETWEEN DIFFERENT CLASSES OF CUSTOMERS

Codes which provide for customer classification and which bind members of the industry to sell their products at prices applicable to classes named (23):

(150) Asphalt and mastic tile; (24) bituminous coal; (96) buff and polishing wheel; (88) business furniture, storage, equipment, and filing supply; (18) cast-iron soil pipe; (81) copper and brass mill products; (128) cement.

(55) Compressed air; (1) cotton textile; (77) crown manufacturing; (67) fertilizer; (90) funeral supply; (134) gas appliances and apparatus; (104) liquefied gas; (31) lime: (10) petroleum; (174) rubber tire manufacturing; (76) rockcrusher manufacturing; (156) rubber manufacturing; (102) shovel, dragline, and crane; (153) valve and fittings; (19) wall-paper; (137) warm-air furnace manufacturing.

Codes provising for definite discounts to be applied to different classes of customers as determined by the trade (8):

(145) Furniture manufacturing; (98) fire-extinguishing appliance manufacturing; (92) floor and wall clay tile; (11) iron and steel; (175) medium- and low-priced jewelry manufacturing.

Codes providing for definite discounts to be applied to different classes of customers as determined by the trade (8):

(131) Pipe nipple manufacturing; (168) refractories; (158) stone-finishing machinery and equipment.

Codes providing for customer classification and definite discounts to be applied to classes named (2):

(9) Lumber and timber products; (148) pyrotechnic manufacturing.

Codes providing against split deliveries (2):

(117) Gear manufacturing; (114) scientific apparatus.

CODES PROVIDING FOR RESALE MAINTENANCE

Date ——, approved ——, 1933.

CODES SPECIFICALLY PROVIDING MAINTENANCE (16)

August 19 (9), lumber and timber products; August 19 (10), petroleum; August 19 (11), iron and steel; October 3 (31), lime; October 3 (34), laundry and dry cleaning machinery manufacturing; October 3 (43), ice; October 11 (55), compressed air; October 11 (57), pump manufacturing.

October 31 (67), fertilizer; October 31 (68), road machinery manufacturing; November 1 (76), rock crusher manufacturing; November 1 (80), asbestos; November 4 (88), business furniture, storage equipment and filing supply; November 8 (102), shovel, dragline and crane; November 27 (137), warm-air furnace manufacturing; November 4 (96), buff and polishing wheel.

CODES PERMITTING AGREEMENTS TO SECURE MAINTENANCE (2)

November 1 (77), crown manufacturing; November 2 (81), copper and brass mill products.

CODES HAVING FAIR PRACTICE CLAUSES THAT MAKE MAINTENANCE POSSIBLE (1)

November 4 (98), fire extinguishing appliance manufacturing.

CODES PROVIDING SOME DEGREE OF PRICE DETERMINATION BY THE PRESIDENT, CODE AUTHORITY, OR OTHER AGENCY (17)

(47) Bankers; (24) bituminous coal; (135) cigar container; (101) cleaning and dyeing trade; (162) domestic freight forwarding; (11) iron and steel; (31) lime.

(9) Lumber and timber products; (132) malleable iron; (10) petroleum; (172) rayon and silk dyeing; (168) refractories; (127) reinforcing materials; (182) retail food and grocery; (142) retail jewelry; (60) retail trade; (156) rubber manufacturing.

CODES PERMITTING CODE AUTHORITY TO ESTABLISH PRICE DIFFERENTIALS (6)

(88) Business furniture, storage equipment, and filing supply; (179) electrotyping and stereotyping; (98) fire extinguishing appliance manufacturing; (145) furniture manufacturing; (180) photoengraving; (153) valve and fitting.

APPENDIX C. EXAMPLES OF PRESSURE ON CONCERNS QUOTING LOWER THAN STANDARD PRICES

1. The following are extracts from correspondence between the Consumers' Advisory Board and the Monypenny-Hammond Co., wholesale groceries and notions, of Columbus, Ohio. The first quotation is from a letter from the Monypenny-Hammond Co. to D. L. Clark & Co., the copy of which was sent to the Consumers' Advisory Board:

"Mr. Snitzer then stated that because we would not maintain the price set by the local association of candy jobbers, it was very doubtful whether you would accept additional business from us. In fact, Mr. Snitzer told us that you would probably refuse to fill the orders which you now had on file for us."

On January 15 the Consumers' Advisory Board received a letter substantially as follows:

"At the present time we are up against a similar attempt to fix a uniform selling price on candy. Several weeks ago the Ohio Wholesale Candy Dealers Association established an arbitrary selling price for candy from service jobbers and from cash-and-carry jobbers. For your information, a service jobber is a wholesaler who travels salesmen and who makes delivery of orders to his customers. In most cases where his customers are entitled to credit, the service jobber also extends credit to his customers for a matter of 30 days. A cash-and-carry jobber has no salesman and no delivery service. His customers come to the jobber's warehouse, pay cash for the merchandise, and do their own hauling. This accounts for the difference between the service and the cash-and-carry prices.

"However, during the past week we have had considerable pressure brought to bear on us to conform to this uniform selling price. This pressure has come from candy manufacturers who have received complaints from other Columbus candy jobbers because we had refused to adopt the uniform selling price.

"Mr. Reader was very much disturbed when he talked to us today, because he felt that if he continued to sell us he would undoubtedly lose out with the other local candy jobbers."

Again, on January 24, a letter from the same source, substantially as follows:

"Since writing you January 15, we received a telephone call from the D. L. Clark Co., of Pittsburgh; Mr. Dailey, sales manager of the D. L. Clark Co., talked to us. Mr. Dailey told us that he had received our letter asking for definite information as to whether or not his company would refuse to sell us because we were not maintaining the selling prices suggested by the Candy Jobbers Association. Mr. Dailey told us his company was not interested in the prices at which we sold their products as long as we sold their brands of candy at the same price level that we sold competing brands. We were, of course, perfectly willing to agree to this, and Mr. Dailey then stated that the D. L. Clark Co. would continue to fill promptly any orders which we might send them.

"Today we have received a letter from the Williamson Candy Co., 4701 Armitage Avenue, Chicago, Ill. This letter advised us of the fact that the Williamson Candy Co. had certain definite prices at which they expected the wholesalers to sell their products to the retail dealers. Their letter further stated that they reserved the right to pick their own distributors. The letter further carried the threat that any jobber who failed to maintain these suggested prices, which, by the way, carried a 20-percent profit to the jobber, that they, the Williamson Candy Co., might refuse to sell such jobbers or that they might limit the size of the orders they would accept from such jobbers during any specified period.

"Yesterday we received a letter from the National Confectioners Association, with offices at 659 Bolivar Road, Cleveland, Ohio. This letter was written by W. M. Hinson, secretary of the association. In this letter Mr. Hinson advised us that he has received one of our recent published price lists showing our prices on candy to be less than the suggested selling prices established by the Candy Jobbers Association. Mr. Hinson stated that he has sent a copy of our price list to Mr. Herbert Tenzer, who is national consul for the National Wholesale Confectioners Association and who at the present time is in Washington meeting with his committee to protect the industry from such practices as ours. The tone of Mr. Hinson's letter would lead us to believe that he is threatening some action against us on the part of the National Wholesale Confectioners Association."

On February 2, a letter from the same source:

"We feel sure that the organization chiefly responsible for the attempt to impose a uniform resale price on candy is the National Confectioners' Association, with offices at 659 Bolivar Road, Cleveland, Ohio. Mr. W. M. Hinson is secretary of this association. Mr. Hinson called on us yesterday in an effort to induce us to advance our selling price on candy to the price set by the local jobbers' association. During the conversation Mr. Hinson told us that his office had received letters from a number of candy manufacturers throughout the country asking his advice as to whether or not he would suggest that these manufacturers discontinue selling us."

And on February 3:

"We are enclosing herewith the letterhead of the National Confectioners' Association. You will note that the officials and the executive committee of this association are composed entirely of candy manufacturers. This leads us to believe that this association is made up from candy manufacturers. Yet the strange part about it, to us, is the fact that Mr. W. M. Hinson is secretary of both the National Association of Candy Manufacturers and the Ohio Wholesale Confectioners Association, which, as you know, is composed of candy jobbers. Being secretary of both associations would give Mr. Hinson the opportunity to police the uniform resale price established by the Ohio Wholesale Candy Dealers

Association and at the same time to bring pressure to bear against candy manufacturers, in his capacity as secretary of the National Candy Manufacturers Association, to refuse to sell any wholesaler who refused to maintain this uniform resale price. We feel positive that Mr. Hinson is the keyman in the entire situation."

The following is an extract from a letter received by the Monypenny-Hammond Co. dated February 1, from the Planters Nut & Chocolate Co.:

"We note that our 5-cent bags of salted peanuts are listed at ridiculously low price that is not in accord with the general resale price set up by your local and State Wholesale Confectioners Association.

"Being members of the N. R. A. ourselves, we are fully in accord with the majority as to the code of ethics set up.

"We respectfully request, therefore, that you eliminate listing our 5-cent bags entirely from these lists unless you can offer the item at the prevailing general price."

2. Other efforts to secure conformity to suggested prices are continued in the following excerpts:

"During the past 2 or 3 weeks, we have been notified by manufacturers of certain commodities, as well as by trade associations, that we would be compelled to sell these commodities on a certain definite price level, which will be a uniform price sold by all our competitors within our particular territory. In every instance this fixed price has meant an increased profit over the former profit made by ourselves as well as our competitors.

"For example, on November 15 all distributors of paper bags have been notified of a suggested selling price which they are expected to conform to. Any distributor who refused to maintain this price level is reported to a committee of distributors. This committee sends this distributor's name to all manufacturers of paper bags, and we are told that from that time on none of the manufacturers will sell this particular jobber.

"We happen to have a large quantity of paper bags, purchased some months ago at a low cost. We would prefer to sell this stock at a reasonable profit rather than advance our prices at this time to the fixed and uniform price specified by the paper-bag distributors.

"Can you tell us whether we are acting within our rights in refusing to advance our prices over and above our normal profit? Or does the Government at Washington, give the paper-bag distributors the power to force us to a higher uniform price with our competitors, and the right to force manufacturers to discontinue selling us if we refuse to maintain his price."

A later letter from the same complainant:

"At the time we wrote you there was, as we told you, an effort being made to establish a fixed and uniform jobbing price on paper bags. We were given to understand that this movement originated from the paper bag manufacturers.

"At no time did we receive any written notice from manufacturers advising us that they would refuse to sell us unless we maintained their suggested resale price. However, at the time we wrote you, we had had a verbal conversation with the representative of a bag manufacturer. This individual called on us in an endeavor to induce us to agree to this suggested resale price. It was during our conversation with the individual that we were told the paper-bag manufacturers would in the future, refuse to sell any jobber who did not maintain the uniform selling price. Later on this same individual denied making such a statement to us. This was after an official of his company had called on us in an effort to induce us to adopt their suggested price schedule and after we had informed this official that we had written the National Recovery Administration relative to this situation.

"Up until approximately 2 weeks ago there was considerable pressure being brought to bear on us to establish this uniform price schedule. We were told that we were the only wholesaler in the State of —— who had refused to line up. We even received a call from an official of the National Association of Bag Manufacturers. But as this call came at the time when the writer was out of the city, we had no opportunity to talk with this individual.

"Then just about 2 weeks ago the attempt to establish a fixed price schedule was given up. We were told that several of the bag manufacturers felt that the proposed plan would not work. What caused this decided change of policy, we do not know. But for the present there is no effort being made to establish a uniform selling price on paper bags."

3. A company in New York City writes as follows:

"There exists at the present time in New York an organization known as 'Photo-Lithographer's Association of New York.' From what we have been able

to learn of them, they are reputed to be an organization of photo-lithographers controlling about 90 percent of the reputed $2,000,000 worth of photo-lithographer equipment in New York City. They are fixing prices and any printer who does not observe their price ruling, it is reported is fined and his paper supplies, material supplies are mysteriously cut off, or are delayed in delivery.

"This information we get only from hearsay, but we do know this, that as late as November we were paying $1.25 per 100 for the first 100 sheets, size 8 by 11, for photo-lithographic work and each additional 100 sheets were 20 cents, with a price of 15 cents per 100, if 500 or more.

"The price today is $1.75 per 100 for the first 100, and 25 cents per each additional 100 regardless of quantity, and that price is being quoted by all litho-photographers with whom we have communicated.

"Of course we can get nothing in writing or specific evidence other than the information we have given herein, and we are advised that the activities of this organization extend beyond the confines of the metropolitan district of New York and any photo-lithographers attempting to vary prices find it difficult to secure materials from out of the city's sources, as well as from within the city itself."

A request for further information brought the following comment:

"Furthermore we were informed by telephone by the —— Printing Co. that they would be glad to give us a lower quotation, but by so doing, they would find themselves in trouble, probably find their supplies cut off, whether purchases were made in New York or outside."

4. A publisher makes the following statement in regard to book paper prices:

"All of these gentlemen prefaced their remarks by saying that they were helpless on price which was dictated by the association. 'We all have the same prices', they said. 'This action has been taken with the approval of the President. It is a part of the recovery program.'

"The first or eastern zone is everything east of the Mississippi. Besides the price chart there is also a folder bearing the heading: 'Explanation of Suggested Resale Prices.' When I remarked that these resale prices were merely 'suggested' Mr. —— replied: 'Yes; that's what they call them, but we know what they are. If we sell below these prices we know that we will be cut off the list, not only by that mill, but by all the other mills.' In reply to my question Mr. —— added that wholesalers were satisfied with the mark-ups given them by the association except on carload lots on which the mark-up was too low."

5. Correspondence from a wholesale confectioner includes the following statements:

JANUARY 30, 1934.

"Within the past 6 months there has been formed a local association of confectionery jobbers known as the 'Wholesale Confectioners Association of Metropolitan Philadelphia' with offices in the —— Building. The purpose of the association was to improve conditions among the jobbers and believing the movements were worthy, I joined this group which embraced nearly all local jobbers. As a member of this association, I sold all products at the price agreed among ourselves as being fair for the retailer and the jobber.

Three weeks ago, I received notice from Mr. —— who is the permanent secretary of the association that I had been dropped as a member on the technical grounds of nonpayment of dues. It is true that I had been in arrears for 2 months, but many jobbers whom I know had been as negligent. Without notice that I would be dropped unless payment was made I received notice that I had been dropped from the membership. Since this notice, I have reapplied for membership and have been told it will be necessary to pay an initiation fee of $100 in addition to the $10 dues. This, I feel, is a discrimination as they feel this amount is so excessive as to discourage my readmission to the association.

Although I am not a member of the association, I am receiving my business at the same prices charged by members, and I am honestly doing everything in my power to carry on my business along ethical lines.

At the present time, I am securing goods from manufacturer, but there has been pressure brought by the association, and I am afraid that in time I will have trouble securing the products which are necessary in carrying on my business.

If possible, I would appreciate an early answer to the following points in this case:

(1) Can the Wholesale Confectioners Association of Metropolitan Philadelphia force me to pay the initiation fee of $100 in order to be taken back as a member? (2) Is there any way that I can secure merchandise from manufacturers who have agreed to only sell their products to members of the Wholesale Confectioners Association of Metropolitan Philadelphia?

I would appreciate an early answer to these questions and will gladly supply you with any further information that you may wish.

(6) Naturally, pressure to maintain high prices is not always sented by the manufacturer himself but may be of concern to the buyer who is unable to secure competitive quotations.

The following correspondence is from a buyer of tinned cold roll strip steel:

"Our information is that the extreme high price is fathered by the —— and while the smaller concerns have frankly shown evidence of conscience they are nevertheless tempted by an opportunity to get a profit beyond their wildest dreams, and it is therefore questionable whether we can prevail upon them to file with the Steel Institute a price based upon the actual increased cost to them resulting from operation under the N. R. A. which is our contention all that they are entitled to at the present time."

The division administrator, Mr. K. M. Simpson, had written to the complainant earlier defining the rights of individual companies under the steel code as follows:

"With reference to the third paragraph of your letter of August 30, we wish to point out that each company lists the prices at which it proposes to sell under the steel code and if any manufacturer of this product desires to sell you at a price below that named by the company writing the attached letter, it is free to do so at any price which is not below reasonable cost of manufacture. You may wish to approach companies producing this product, soliciting the prices they are willing to offer you on this date.

"K. M. SIMPSON,
"*Division Administrator.*"

Two later letters from the complainant contain the following:

"JANUARY 18, 1934.

"During a further discussion with the small manufacturers, who can most economically produce flat steel for our purpose, they frankly admit they fear to offend the big manufacturer by filing a price that will cover only the increase in cost resulting from operation under the N. R. A. They claim the big manufacturers can do anything the small manufacturers do, and that irrespective of what share of our tonnage goes to the big fellows, offending them means loss of tonnage other than ours."

"JANUARY 18, 1934.

"Two of the smaller manufacturers have indicated that they might proceed along the lines you have suggested provided they felt sure that their names could be kept confidential. It is evident they are badly scared. We do not want to drive them too hard, and hope the information already given you provides sufficient leads to permit the administration to uncover the facts."

7. Another letter cites the following example:

"But when every jobber and distributor says that the book-paper mills got together under the egis of the N. R. A. codes, agreed on uniform prices for the various grades, uniform differentials for tonnage, colors, etc., then the system is wrong and will ultimately hurt the book-paper industry as much as it now is the publishers who are paying the recently lofted prices.

"Last May we paid $4.50 a hundred for easter super. We just placed an order at $6.25. The seller said it was too high, but he was helpless under the prices established under the N. R. A. code. That is practically a 39-percent jump.

"A friend of the writer in the wholesale paper trade by mistake failed to add the printed code differential for india tint in quoting a printer. The quotation was accepted. It was legally a contract. The mill was informed of the price and forced cancelation of the quotation and an increase in the printed sheet figure. Up to the time of the code agreement this wholesaler made his own prices. Today he must charge what the mill prints on its standard form or get no paper to fill his contracts.

"We have understood that the N. R. A. did not mean the repeal of the Sherman and Clayton Acts. The book-paper industry thinks it does."

8. The following letter showing pressure brought to bear to require conformity in bids in incandescent lights was introduced in the price hearing on January 9 and 10 by Mr. J. W. Nicholson, purchasing agent for the city of Milwaukee:

"Relative to your letter of December 26, we are returning herewith your order no. 2771, together with your formal contract forms in triplicate unsigned, inasmuch as we are compelled to do so by our suppliers, the Incandescent Lamp Department of the General Electric Co. They have refused to ship lamps

ordered by us on your orders nos. 2732, 33, 35, 36, 37, and 38, stating that our bid was irregular in that your specifications conflicted with those of the incandescent lamp department, and that we as their agents, were not permitted to accept this business. It is extremely unfortunate that this situation has occurred, but under the conditions as outlined above, we are compelled by our source of supply to withdraw our bid.

"We then awarded the entire contract to the firm that had the $20,000 business and we ordered the bond of the $30,000 contractor forfeited. It was a $1,000 bond and he had to suffer that loss, or the surety company has, who signed the bond.

"Now, the gentlemen who received the $50,000 contract, the combined contract, called me up and said that they had been told they were going to have difficulty delivering these lamps, but they were going to wait and see what happened at this meeting before they shut down on them."

9. This statement of Mr. Herman J. Pipkern, building materials dealer, has been forwarded to us by Mr. J. W. Nicholson, purchasing agent, city of Milwaukee, Wis., and has to deal with the sand and gravel code.

"Regarding sand and gravel dealers, they do not seem to know what they are doing although we have posted our price with building materials code authority. Mr. Norman K. Wilson, 610 West Michigan Street, Milwaukee, is the head of the Sand and Gravel Dealers Aggregate Association. We file prices with our code authority. We bid 10 cents a yard less to the county park commissioner and our bid was thrown out because we were not abiding by the code. Mr. Wilson told them we were not abiding by the code if we bid a lower price. On another job at the county institutions for sand and gravel we were told by Mr. Wilson what the price should be. We bid that price and later on he said he had made an error and had given me the wrong figures. Our bid was thrown out because we were not abiding by the code. Mr. Wilson stated we were not abiding by the N. R. A. He said we had to quote their prices. Dr. Fitzgerald upheld me in my prices and secured orders for us after we wrote a letter to him explaining matters. They knew they were all wrong and immediately corrected themselves. We tried to act independently. They have been trying to prevent us from getting business."

10. The following extract from the public hearing of the cast-iron soil pipe industry is another example of the practice under discussion:

(Mr. C. A. Hamilton represents the Alabama Pipe Co., Anniston, Ala.)

"Deputy KING. Do you think there are members in your industry who, if they had a 2,000-ton order offered them would likely file a more attractive price if it was necessary to get the business?

"Mr. HAMILTON. We have had to sit up at night with them to keep them from doing that, but they have not done it yet.

"Deputy KING. You mean you have used pressure on them to keep them from doing it?

"Mr. HAMILTON. No, sir; not pressure, but we have tried to show them the errors of their way.

"Deputy KING. The errors on that are in your opinion bad?

"Mr. HAMILTON. In our opinion that it would break us down, so that we would be apt to be selling below cost. A man can take 2,000 tons today in the industry, and make a price lower than the fellow who has not got the mechanical operations. He could take a 2,000-ton order and quote a lower cost than the other fellow that has got less carloads and carload shipments, 'piecemeal orders' we call them.

"Deputy KING. Then, you admit in the operation of this open-price structure that if a manufacturer in your industry files a lower price you would sit up nights with him trying to get him to come up?

"Mr. HAMILTON. I say that we have done. I do not think we sat up all night but we lost some time on it.

"Deputy KING. I admire your frankness, Mr. Hamilton.

"Mr. HAMILTON. Yes, sir; we are trying to hold this industry together, Mr. King, so that we will be above cost, and one man can't get an advantage so that he can quote a lower cost than the other man by going up and publishing his price and taking a big order against the other fellow and establishing a lower cost.

"Deputy KING. Yes; but we are concerned in the operation of a cost that permits price fixing, and permits members of an industry to get together and arrive at a price that will be at variance with public interest in the matter.

"Mr. HAMILTON. I understand that, sir; but the life of this industry * * * depends on trying to get above costs for our goods.

"Deputy KING. I am not getting above cost.

"Mr. HAMILTON. I will say 'cost' then, let me change that and say 'cost'——

"Deputy KING. Suppose your cost is $30 a ton and your filed price is $40 a ton, and the manufacturer files a price of $35 a ton, do you think you are justified—this is above his cost—in sitting up nights, trying to get him to go back to $40 a ton?

"Mr. HAMILTON. I do, sir, if he is going to be able, with that large order we have mentioned, to make a better cost than anybody else in the industry.

"Deputy KING. Is cost such a variable in your industry that one order of that kind can influence the cost?

"Mr. HAMILTON. Today, yes; very materially, sir."

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

SATURDAY, MARCH 30, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, Connally, Clark, Black, Gerry, Couzens. Also present: Senator Patrick A. McCarran.

The CHAIRMAN. I wish to read to the committee a memorandum that was prepared by the experts from the testimony of Dr. Blaisdell yesterday with reference to charges made with reference to the Rubber Manufacturers Association. [Reading:]

The original complaint in this matter was filed with the Federal Trade Commission by Joseph W. Nicholson, purchasing agent and secretary of the Central Board of Purchases of the city of Milwaukee, Wis. and also special representatives of the United States Conference of Mayors on February 14, 1935. Additional data was requested by the Chief Examiner under date of February 18, which was received February 28. The matter was then docketed as an application for complaint, the Rubber Manufacturers Association of America and some 18 manufacturers of fire hose being named as respondents, and the Commission directed the investigation of the complaint be expedited in every manner possible.

The application was docketed on the following charges: Conspiracy in restraint of trade; collusive price fixing; boycott, and the operation of an illegal system of resale price maintenance.

The report covering this investigation was filed with the Chief Examiner March 20 and after the necessary review, was submitted to the Commission on March 22 for consideration and action. The Commission thereupon ordered that complaint issue against the Rubber Manufacturers Association, Inc.; The Code Authority for the Rubber Manufacturing Industry; Divisional Code Authority for the Mechanical Rubber Goods Division; J. H. Connors, chairman, H. N. Young, C. G. Garretson, members, A. D. Kunze, secretary, and Hamilton Albert, assistant secretary. There are also to be named in the complaint 18 manufacturers of fire hose who are operating under the Code for the Rubber-Manufacturing Industry. Complaint in this matter is now being prepared in the office of the Chief Counsel of the Commission. The complaint will contain allegations with respect to collusive price fixing, boycott with respect to the activities of the code authority and the manufacturers with respect to measures adopted to prevent manufacturers availing themselves of the provisions of Executive Order No. 6767, and the operation of an illegal system of resale price maintenance.

The attorney who conducted the investigation of this case and prepared the report thereon is now in the city and is available to the committee, if it desires his testimony. The complete file containing the data on which the report is based is also available for committee use in these hearings.

I have here the report of the Chief Examiner of the Federal Trade Commission, also the final report of the investigating attorneys of the Federal Trade Commission with reference to this matter. Is it desired that these reports go into the record?

(The reports referred to above are as follows:)

REPORT OF THE CHIEF EXAMINER FEDERAL TRADE COMMISSION

IN THE MATTER OF AN APPLICATION FOR COMPLAINT

Joseph W. Nicholson, Special Representative United States Conference of Mayors, et al., v. Rubber Manufacturers Association, Inc., Code Authority for Rubber Manufacturing Industry, Divisional Code Authority for the Mechanical Rubber Goods Division of the Rubber Manufacturing Industry, et al.

(Mar. 20, 1935. To docket and Commission. J. A. H., Chief Examiner)

(1-8120)

Memorandum for the Commission.

On February 11, 1935, Mr. Joseph W. Nicholson, purchasing agent for the city of Milwaukee and special representative of the United States Conference of Mayors, complained that the manufacturers of fire hose had fixed the prices for that product and asked the Commission's aid in breaking up the alleged collusive bidding in connection with the sale of fire hose so that municipalities and others might purchase fire hose at a reasonable price.

Fire hose is manufactured by some 19 companies, all or substantially all of which are members of the Rubber Manufacturers Association. The Rubber Manufacturers Association has been active since at least 1915 and has been and is the principal trade association in that industry. In submitting a proposed Code of Fair Competition for the Rubber Manufacturing Industry to the National Recovery Administration, the Rubber Manufacturers Association claimed to represent approximately 85 percent of the volume of production and over 50 percent of the members of the industry. The total sales of members of the Rubber Manufacturers Association exceed $1,000,000,000 annually, and those of members of the division of that industry of which fire-hose manufacturers are a part, approximate $68,000,000 annually. The income of the Rubber Manufacturers Association for the calendar year 1934 exceeded $400,000. These general facts are stated to show the industrial significance of the respondents herein.

The approach made by the industry to the self-government which it anticipated as a result of the consideration being given by Congress to the National Recovery legislation in the spring of 1933, is reflected by a meeting of accountants representing the members of the Mechanical Division of the Rubber Manufacturers Association held May 31, 1933. At this meeting C. D. Garretson, now a member of the Divisional Code Authority for the Mechanical Rubber Goods Division, said in part:

"The purpose of the meeting is to develop certain facts of the industry, agree on certain fundamentals, get the capacity of the industry, and costs so that the sales executives of your companies may finally agree on uniform selling prices and, possibly, an apportionment of business which will finally be embodied in a code to be approved by the Government. * * *

"Under the bill as it will be passed, it will be necessary to be fair to each individual company, but it is evident that the method of eliminating cut throat competition must be the fixing of prices."

In 1932 and in 1933, immediately prior to the meeting referred to above, there was no uniformity in prices bid by various manufacturers of fire hose. On October 11, 1932, bids were opened by the department of purchase of the city of New York on certain rubber fire hose. These bids were as follows:

Name of bidder:	*Price per foot*
Continental Rubber Works	$0.231
Eureka Fire Hose Manufacturing Co	.249
B. F. Goodrich Rubber Co	.25
Boston Woven Hose & Rubber Co	.2625
Goodall Rubber Co., Inc	.30
Republic Rubber Co	.305
Quaker City Rubber Co	.3263
Goodyear Tire & Rubber Co	.334
American La France & Foamite Industries, Inc	.334
Hamilton Rubber Manufacturing Co	.344

It will be noted that 10 bids were submitted, only 2 of which are the same, those of the Goodyear Tire & Rubber Co. and American La France & Foamite Industries, Inc., and the latter is an agent of the former. The investigation shows that similar differences in prices occurred in bids made to other municipalities on other dates prior to June 1933.

On June 21, 22, and 23, 1933, the members of the Mechanical Rubber Goods Division of the Rubber Manufacturers Association held meetings at Trenton, N. J., at which a "Declaration of Business Principles of the Mechanical Rubber Goods Division" was adopted. This declaration contains among other provisions the following:

"4. (a) On goods made to customers' specifications, whether they be railroad, industrial, or Government specifications, and on those highly competitive items which are generally recognized by the trade, we will match costs and will adopt a minimum selling price on these items based on the total cost of the most efficient manufacturers, the price so arrived at to be considered the minimum price for all similar goods."

and

"To eliminate unfair competition, we hold that is necessary for us to adopt and rigidly enforce sales prices of our products for our branch stores, as well as enforce minimum resale prices by our jobbers and/or retailers, which shall not be lower than the minimum prices out of factory branches."

It was further agreed:

"Despite the fact the foregoing 'Declaration of Business Principles' must be approved by the Industrial Recovery Administration before it becomes binding on all units of the industry, it was the concensus of opinion that all mechanical rubber goods manufacturers represented at this meeting should consider the code to be immediately operative and conduct their future operations in accordance with its provisions."

On June 29, 1933, the Acme Rubber Manufacturing Co. wired the secretary of the Rubber Manufacturers Association:

"Important that all members mechanical group attending Trenton meeting last week be immediately notified new price schedule becomes effective July 1 as board directors have tentatively approved our code."

A few days later, on July 14, 1933, bids were opened by the Department of Purchase of New York City on 25,000 feet of 2½-inch cotton rubber-lined fire hose in 50-foot lengths. These bids were as follows:

	Price per foot
Hewitt Rubber Corporation	$0.71
Manhattan Rubber Co	.75
B. F. Goodrich Rubber Co	.71
Goodyear Tire & Rubber Co	.71
Quaker City Rubber Co	.71
Republic Rubber Co	.71
Hamilton Rubber Co	.71
Boston Woven Hose and Rubber Co	.71

The file contains evidence indicating that effective July 1, 1933, the price on 2½-inch underwriters specification fire hose was increased from approximately 47 cents per foot to 70 cents per foot. Similar action was taken with respect to other sizes and types of fire hose, but the 2½-inch size has been selected as reasonably representative. It is also indicated by the file that the fixed prices thus established were substantially observed during the remainder of 1933.

A code of fair competition (No. 156) for the rubber manufacturing industry was approved by the President effective December 26, 1933. This code applied to those engaged in—

"* * * the manufacture for sale in the continental United States (including Alaska) of any rubber product or products, expressly excluding, however, all solid and pneumatic tires and pneumatic tubes, and tire accessories and/or tire repair materials, together with such other rubber products as may be specifically covered by another duly approved code of fair competition."

The industry was divided into several branches for administrative purposes, as follows, Automobile fabrics, proofing, and backing division, rubber flooring division, rubber footwear division, hard rubber division, heel and sole division, mechanical rubber goods division, sponge rubber division, rubber sundries division, rainwear division.

The code further provides that the code authority shall consist of the chairmen of the several divisional code authorities and that the general manager of the Rubber Manufacturers Association shall act as chairman of the code authority without vote.

Chapter VII of the code covers the mechanical rubber goods division. Article IV, section 1, reads:

"No member of the division shall initiate a price not in accordance with chapter I, article VII. No member shall sell any standard goods or goods made under recognized standard specifications at prices lower or on terms more favorable than the prices and terms in his present schedules and price lists filed pursuant to article III of this chapter, unless he has first filed revised schedules and lists to take effect in not less than ten days from date of filing. The association shall promptly after receipt of such revised schedules and lists notify all members affected. Such affected members may thereupon file with the association, if they so desire, revisions of their price lists which, if filed prior to the date when the revised price lists first filed shall go into effect, may become effective on said date."

Chapter I, article VII, above referred to, reads:

"SECTION 1. Each member of the industry shall substantially adopt and adhere to the methods of cost determination and the cost accounting formulae adopted by each division, and advocated in the association accounting manual and revisions thereof adopted by the association from time to time, subject to the approval of the Administrator.

"SEC. 2. No member of the industry shall initiate the sale and/or exchange of any product of its manufacture at a price or upon such terms or conditions as will result in the customer paying for the goods received less than the seller's own individual cost, determined as in section 1, subject to any qualifications in the several divisional codes provided, however, the provisions of this section shall be construed not to prohibit any member of the industry from selling below his own individual cost in good faith and in order to meet the competition of any other member. Where the term "representative member" is used in any divisional code in connection with any such qualifications, it shall be deemed to exclude any member of the industry whose actual capital costs are unduly low due to the acquisition of plant at less than fair appraisal value, or to other exceptional circumstances out of the course of normal business; but this shall not be construed as applying to any legitimate advantages due to location, material costs, or manufacturing methods. *Provided*, That seconds and obsolete goods may be marketed on such terms and conditions as the divisional authorities may approve."

The divisional code authority first undertook to effectuate the price-filing provisions at a meeting held February 2, 1934.

"By motion duly adopted the divisional code authority decided to call for the official filing of prices, on or before February 19, on all products coming within the scope of the mechanical divisional code. * * *"

A second price filing took place on or about April 4, 1934. The prices filed, taking the 2½-inch double jacket uncoupled hose item, were to all intents and purposes uniform at 70 cents per foot. The code authority recommended that prices on this item should be refiled quarterly, and the next filing occurred July 1, 1934, at which time the prices filed were uniform at 74 cents per foot, and a decrease of 5 percent was made in the discounts allowed certain classifications of customers.

The divisional code authority by no means limited itself to requesting individual manufacturers to file their prices. The file shows that in a great number of instances where bids were asked by various municipalities throughout the United States for supplying fire hose, the code authority called the attention of the members to such requests for bids prior to the date they were to be submitted and pointed out in numerous instances the manner and form in which such bids should be made. Attention was particularly directed to those instances where it appeared that by reason of the form in which the bids were asked, price variations might occur, and the procedure which in the opinion of the code authority should be followed was pointed out. For instance, in a letter dated January 17, 1935, to manufacturers of underwriters fire hose the secretary of the divisional code authority wrote in part:

"In view of the fact that bids were to be opened by the above for a quantity of fire hose on January 23, and that there were certain complications in connection with the request for bids, to which if exceptions were not taken, would be violations of filed prices, this office sent a telegram to all members of the group on January 14, and again on the 15th sent another telegram, the last sentence of which read: 'Price quoted is exclusive of State sales tax'. This was added in view of the note in the request for prices which read 'unless otherwise stated the price quoted will include State sales tax'.

"It was called to our attention that the California State sales tax does not apply to material manufactured and shipped from without the State. Consequently, if instructions given in our telegram were followed by the Pacific

coast companies they would be at a disadvantage of 2½ percent. Therefore, they are quoting their filed prices to include the California State sales tax."

On July 18, 1934, the Secretary of the Mechanical Division of the Code Authority addressed a letter to members of the miscellaneous hose subdivision, reading:

"It has been brought to our attention that the city of San Antonio requested prices on fire hose some little time back and has been continuously putting off the purchase of the hose. Prices quoted were those in effect as filed prior to July 1.

"This hose has not yet been purchased, and the prices offered should be changed immediately to those filed as of July 1 and now effective.

"Please be kind enough to advise us whether or not you have withdrawn your original quotation and, if not, that you will do so at once, substituting therefor bids at prices now in effect."

On December 1, 1934, the secretary of the same group addressed members with respect to bids submitted to the city of Dallas, as follows:

"We have been informed that the bids submitted to the above have been thrown out and that the city council has instructed the purchasing agent to buy the hose on the open market. It is apparent that this was done because of manufacturers quoting their filed prices, with the exception of a few errors in prices on special brands, which we believe were all corrected. It is our understanding that the city of Dallas was only interested in underwriters hose.

"Will you advise us what action you will take in the apparent attempt to break filed prices."

Instances such as the above could be multiplied at length.

In addition to price activities such as those pointed out in the preceding paragraph, the code authority in many instances followed up the bids submitted to municipalities, and wherever any variations from the filed prices occurred immediately wrote the bidders insisting that they withdraw such prices. One of the many instances of this type of activity appears in a letter addressed by the secretary of the Mechanical Divisional Code Authority to members, in which he quotes a report of the prices bid to the city of Boston on ¾-inch 4-ply chemical hose, and continued:

"This is to remind you that according to prices on file with this office pursuant to Code No. 156, chapter VII, the lowest price that can be quoted the city of Boston on ¾-inch 4-ply chemical hose equipped with pin lug couplings is 0.306 per foot, coupled, and equipped with hole type couplings 0.3096 per foot, coupled.

"We have so advised the city of Boston in response to its specific request for information on the subject.

"Will the manufacturers involved in this situation, as indicated above, please immediately withdraw any prices quoted the city of Boston below those just named?"

In addition to the general price filings required of members, the divisional code authority from time to time required the filing of prices on specific bids to be made to municipalities. On June 26, 1934, the secretary of the divisional code authority addressed members:

"Please consider this letter as a definite call on behalf of the Mechanical Divisional Code Authority for the filing of prices on 2½-inch double-jacket cotton rubber-lined fire hose and couplings made in accordance with the specifications of the city of New York. Kindly favor us with this filing on or before July 1, 1934, and be certain to send us 35 copies thereof."

In a letter of July 5, 1934, between the same parties, the secretary stated that he had received price filings of 78 cents per foot, coupled, from 13 manufacturers that he named in his letter and that—

"The Pioneer Rubber Mills has filed a price of 82 cents per foot, equipped with pin lug couplings and 84 cents per foot, with rocker lug couplings.

"American, Cincinnati, Mercer, and Thermoid advise that they do not intend to bid on the forthcoming proposal."

The record in this case contains numerous instances of price activities by the code authority similar to those already specifically pointed out, and in addition shows other types of price activities, none of which appear to be specifically provided for by the terms of the code and which are obviously calculated to aid in bringing about and continuing uniformity of prices quoted to governmental agencies for fire hose.

Executive Order No. 6767, approved by the President June 29, 1934, provides:

"Any person submitting a bid to any agency or instrumentality of the United States, or any State, municipal, or other public authority, to furnish goods or services at prices which, in accordance with the requirements of one or more approved codes of fair competition, must have been filed, prior to their quotation,

with the code authority, or other designated agency, shall be held to have complied adequately with the requirements of such code of fair competition: (a) If said bidder shall quote a price or prices not more than 15 percent below his price or prices filed in accordance with the requirements of such code or codes; and (b) if, after the bids are opened, each bidder quoting a price or prices below his filed price or prices shall immediately file a copy of his bid with the code authority or other appropriate agency with which he is required to file prices. * * *"

Under date of July 3, 1934, A. L. Viles, chairman of the code authority, addressed a letter to all members of the industry, referring to the above-mentioned Executive order, and stated:

"The code authority of Code No. 156, at a meeting held on July 2, 1934, appointed a special committee to prepare and submit a brief to the Administrator requesting exemption from the provisions of the Executive order in question.

"It was the sense of the meeting that pending final decision on the requests for an exemption, it would be desirable for manufacturers individually to adhere to their currently filed prices and terms in bidding on all governmental inquiries."

This recommendation was effective. The record conclusively shows that with few exceptions the members of the industry did not avail themselves of the terms of the Executive order in bidding to governmental units and prevented such action by dealers. This attitude on the part of the members of the industry was encouraged in various ways by the secretary of the divisional code authority in question here. For instance, on December 12, 1934, he addressed a telegram to all manufacturers of fire hose, reading:

"Understand Los Angeles rejected all bids fire hose will readvertise shortly. Reported rumor current that some manufacturer directly or indirectly has indicated intention on reopening to extend city benefit 15 percent discount off filed price permitted under Executive Order 6767. All manufacturers including coast have indicated intention adhere filed price and not give city benefit Executive order wire concurrence."

Up to this time no exemption has been granted to the rubber industry pursuant to its request, not has there been any reasonable prospect of such action. It is extremely doubtful that the industry entertained, in good faith, any real hope that such exemption would be granted. None has been granted to any industry.

Chapter VII, article V, sections 1 and 2, read:

"Uniform terms of sale shall be established by the divisional authority subject to the approval of the Administrator, which may include freight paid or allowed to customer. In no case shall the freight allowed by any member to any customer be more than the published freight rate by the route used from the member's factory to the destination.

"No member of the division shall offer or give any discounts other than those specified in such member's price schedules or price lists on file with the association. After January 1, 1934, no member of the division shall offer or give any rebates or bonuses to any classification of buyers."

Other sections of the same article prohibit any warranty other than a standard one; any guaranty against price declines; any contingent sale or purchase; the supplying of excessive samples; the giving of exclusive sales help except under certain provisions; or the postdating or predating of any invoice. The code authority drew up uniform terms of sale, which were approved on July 12, 1934, by Administrative Order No. 156–22. The terms of sale thus becoming effective under the code cover every factor which might prevent ultimate uniformity of price.

The code authority pursued activities with respect to the maximum terms of sale similar in general character and import to those carried out with respect to the price filing provisions as pointed out above. In one particular the code authority went even further. The terms as approved include a cash discount of 2 percent in 10 days, or net in 60 days. In purchasing fire hose the city of New York had a long-standing policy of specifying terms of 2 percent in 30 days in its advertisements for bids and, as shown by letter of the code authority dated February 18, 1935, the code authority authorized bidders on New York City specifications to depart from the uniform maximum terms of sale which had been approved by the Administrator July 12, 1934.

This situation continued until March 1, 1935, when the code authority, in a letter to members, after pointing out the previous action with respect to terms of sale to the city of New York, said:

"This means that regardless of the conditions referred to in the foregoing quotation, members of the industry, effective immediately, are required to observe the uniform maximum terms of sale, as approved by the Administrator in all dealings with the city of New York.

Chapter VII, article III, section 1 of the code, provides:

"To assist in providing uniform trade practices and preventing discrimination and unfair competition, group customer classification, definitions, based upon differences in costs and services rendered, may be adopted by the division, subject to the approval of the Administrator for the following classifications under the title of 'Definitions of Buyers of Mechanical Rubber Goods' and such definitions shall be filed from time to time with the association.

"Classification of buyers of mechanical rubber goods: Jobbers and mill supply houses; distributors; dealers; mail order-chain stores; department stores; syndicate buyers; equipment manufacturers; industrials; Government: Federal, State, county, municipal; consumers.

"If such definitions shall, by virtue of their application, pursuant to this chapter, work hardship upon any member of the division or customer, such member or customer may apply to the divisional authority, which shall have power to reclassify such customer as justice may require."

The code authority submitted to the National Recovery Administration definitions of the several classifications of customers which were approved October 2, 1934, by Administrative Order No. 156–38. Office memorandum no 267, issued by the National Recovery Administration on July 20, 1934, in treating the policy of N. R. A. with respect to classification of customers, pursuant to code provisions, includes:

"* * * and each member of the industry may, at all times, classify his own customers in accordance with his own judgment."

The file in this case shows that prior to the approval of group customer classification definitions by the Administrator the divisional code authority was active in classifying and reclassifying customers of its members. These activities were not begun by individual members of the division or customers but generally followed complaints by members of the industry that a competitor was selling a specified account on terms more favorable than those to which the complaining member felt the customer in question was entitled. The minutes of a meeting of the divisional code authority on April 11, 1934 show:

"At a meeting of the mechanical divisional code authority, held on March 30, the authority approved a procedure recommended by the flat belt, molded hose, and miscellaneous hose groups, whereby members of those groups will refrain from quoting distributors or a distributor's basis of price without having first secured the authority's approval of the classification of the given account as a distributor, pursuant to the definition covering that class of trade."

At a meeting of the code authority held October 29, 1934 the following was adopted:

"The mechanical divisional code authority will receive for approval recommendations of any subdivision, group or subgroup of the mechanical division with respect to reclassification of accounts, provided such recommendations are the result of a majority vote in volume and number of all code members of the subdivision, group, or subgroup involved."

The code authority carried on practically continuous activities with respect to classification of customers of its members, not upon request of members but upon its own initiative. Members of the industry were advised of classifications made by the code authority from time to time. On December 18, 1934, for instance, the divisional code authority wrote its members:

"Please accept this letter as official notification from the mechancial divisional code authority with respect to the proper classification of the accounts named in exhibit A, attached, under the group customer classification definitions, approved by the administrator, pursuant to Code No. 156, chapter VII, article III, section 1.

"This classification of accounts is effective January 1, 1935. Any arrangements which embrace prices and terms more liberal than filed prices and terms on flat belt, molded, braided hose, miscellaneous hose and related goods to the accounts named, according to their classification, must be changed to conform to currently filed prices and terms to the respective classifications as of January 1, 1935.

"Improper classification of accounts is a violation of the code."

In view of the uniformity of prices and terms already discussed, the code authority by demanding and securing the cooperation of members of the industry in observing its classification of accounts, prevented possible competition in price and enabled manufacturers arbitrarily to grant or withdraw discounts. This is illustrated by "net" prices to chain stores, department stores, syndicate buyers, municipalities and other customers who, while buying in large volume, nevertheless paid 20 percent more than a small dealer or jobber. The customer classification resulted also in the elimination of all quantity discounts.

The code authority, as another feature of its activities in the maintenance of uniform prices, undertook to require dealers and jobbers who purchased fire hose from members of the industry, to conform in the resale of such hose to the prices filed by the manufacturer with the code authority for the particular classification in which the individual or concern purchasing from the dealer or jobber was placed. The method followed to enforce resale prices in cases where jobbers or dealers refused to withdraw the lower prices is illustrated by the following instance: On February 21, 1935 the code authority issued a bulletin calling attention to a bid made by the Boston Belting & Rubber Corporation and stated:

"We have contacted the Boston Belting & Rubber Corporation direct on behalf of both items and have been unsuccessful in getting them to withdraw their price. Their contention is that they did not have any filed prices on the packing, and on the hose; they said that they had not received any filed prices until the 1st of February and that their bid had been sent in prior to that date. * * *

"In view of the fact that the Boston Belting & Rubber Corporation have quoted prices below manufacturers' filed prices, and also that orders covering the above would be easy to recognize as they are made to specifications, will you kindly advise us your attitude if offered these orders, inasmuch as Boston Belting & Rubber Corporation would not correct or withdraw their prices."

Responses by members of the industry to the code authority were as follows:

By Hamilton Rubber Co.:

"This will acknowledge receipt of your letter of the 21st (MG–C–1663) on the above subject.

"We wish to advise that should we be offered the orders in question by the Boston Belting & Rubber Corporation we would refuse to accept same inasmuch as their prices were in violation of our filed prices on these items."

By Boston Woven Hose & Rubber Co.:

"Replying to your circular MG–C–1663, we do not manufacture wire-inserted packing and would not care to quote the Boston Belting & Rubber Corporation on house."

By Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc.:

"We acknowledge your letter of February 21, 1935 (MG–C–1663) on the above subject.

"In the event of our being called upon to furnish material to Boston Belting & Rubber Corporation in conjunction with this inquiry, it would be necessary for us to refrain from so doing due to the fact that their prices are based on those below established filed prices."

By B. F. Goodrich Co.:

"This will acknowledge your letter of the 21st (MG–C–1663).

"Should any of these items be offered us by the Boston Belting & Rubber Corporation, we would decline to furnish same."

By United States Rubber Products, Inc.:

"This will acknowledge receipt of your letter MG–C–1663 dated February 21, 1935, under the above subject, calling our attention to a bid by the Boston Belting & Rubber Corporation which is not in accordance with filed prices.

"This is to advise that if the Boston Belting & Rubber Corporation offer the United States Rubber Co. these orders, we will not fill them.

By the Cincinnati Rubber Manufacturing Co.:

"In reply to your letter of the 21st; wish to state we have never submitted prices on mechanical rubber goods to Boston Belting & Rubber Corporation.

"Should the orders for the items disclosed in your letter be tendered to us, we would decline to fill them."

By Whitehead Brothers Rubber Co.:

"In reply to your letter of February 21, MG–C–1663, concerning recent bids to the Panama Canal on fire hose and packing. We will not fill these orders if they are offered to us below our filed prices."

By Thermoid Rubber Co.:

"Replying to your letter of February 21, circular MG–C–1663, subject Official Filing of Prices—Fire Hose and Packing—Panama Canal Schedule 3027—bids opened February 13, would advise that we will not accept the orders for these items from the Boston Belting & Rubber Corporation if they are offered to us."

By the Republic Rubber Co.:
"Referring to MG–C–1663, wish to advise that we would not accept the orders referred to provided the same agreement is made by all other manufacturers."

By Continental Rubber Works:
"Replying to your letter MG–C–1663, dated February 21, beg to advise in case we should be approached by Boston Belting & Rubber Corporation with the suggestion to secure for them materials as falling within classes 37 and 41 of Panama Schedule 3027—bids opened February 13—we would refuse to be of any assistance to them in making possible supplying of the goods which were quoted at an off-schedule price."

By American Rubber Manufacturing Co.:
"Reference your letter of February 21, No. MG–C–1663, on the above subject. We wish to advise that if we are approached by the Boston Belting & Rubber Corporation to fill their order, we will decline to do so."

By Pioneer Rubber Mills:
"If the Boston Belting & Rubber Corporation offer us orders for the specification material on which they have submitted bids below filed prices, we shall decline to fill them."

The original complaint in this matter received from the purchasing agent for the city of Milwaukee, related to bids made to that city on certain fire hose in which there were 18 bidders who submitted bids absolutely identical in all particulars with the exception of one, N. L. Kuehn Co., a dealer located in Milwaukee, whose bids were approximately 8 percent below those of all other bidders. The same procedure was followed by the code authority and manufacturers with respect to N. L. Kuehn Co. as shown above in connection with the Boston Belting & Rubber Corporation. The record contains evidence showing similar procedure in connection with about 30 cases such as that of the Boston Belting & Rubber Corporation and notations have been made of a greater number, the evidence of which was not taken from the files of the code authority.

These activities amount to boycotts carried out at the instigation of the code authority for the purpose of insuring price uniformity and enforcing resale price maintenance by dealers who are not subject to the terms of the code for the Rubber Manufacturing Industry.

As a result of the very limited time in which this investigation has been made, it has been strictly confined to fire hose. It can be said, however, that substantially the same conditions found to apply with respect to fire hose obtain with respect to other commodities within the Mechanical Rubber Goods Division. Further by reason of time limitation some data, including the corporate status of some of the respondents does not appear. These deficiencies, however, can be supplied.

From the foregoing it is believed that it can be properly concluded that prior to the approval of any code for the Rubber Manufacturing Industry, in anticipation of the passage of the National Industrial Recovery Act and of the approval of codes subsequent thereto, the Rubber Manufacturing Industry through the Rubber Manufacturers Association, Inc., adopted a set of so-called "business principles" including a provision for minimum prices; that these rules were by agreement made immediately effective some 6 months before any code was finally approved by the President; and that the rules in question were intended to and did create price uniformity by illegal means including the elimination of every possible competitive factor which might disturb uniform prices established by the subscribing members.

The Code of Fair Competition which was approved effective December 26, 1933, to all practical purposes is the same as the so-called "business principles" already adopted and made effective by the industry. The executive authority established pursuant to the Code of Fair Competition for the Rubber Manufacturing Industry has gone beyond any rights which reasonably flow to it from the actual provisions of the code and in the interest of maintaining uniform prices and eliminating competition has prevented any benefits accruing to governmental agencies as a result of Executive Order 6767; has supplemented the price-reporting provisions of the code by acts of its own whenever such action seemed desirable and necessary to it to prevent price cutting; has by the means already pointed out induced and enforced resale-price maintenance by dealers not subject to the code for this industry; and has arrogated to itself the right and power of classifying customers of members of the industry in order to prevent any price variation to customers who might be differently classified by various members of the industry were the classification left in the hands of the individual members.

The above conclusions relate to activities of the Code Authority not authorized by the code and to which no immunity may flow by reason of the code. The activities disclosed by this investigation show the creation of a conspiracy in restraint of trade in June 1933, and a continuance of that conspiracy in part through the Code of Fair Competition secured in December 1933, and in part through activities outside of the code. The parties to this conspiracy are the Rubber Manufacturers Association, Inc.; the Code Authority for the Rubber Manufacturing Industry; the Divisional Code Authority for the Mechanical Rubber Goods Division, J. H. Conners, Chairman, H. N. Young and C. D. Garretson, members, A. D. Kunze, secretary and Hamilton Abert, assistant secretary; and the following manufacturers, members of the Rubber Manufacturers Association and of the Mechanical Rubber Goods Division of the Rubber Manufacturing Industry Code:

Acme Rubber Manufacturing Co.; American Rubber Manufacturing Co.; Boston Woven Hose & Rubber Co.; Cincinnati Rubber Manufacturing Co.; Continental Rubber Works; B. F. Goodrich Rubber Co.; Goodyear Tire & Rubber Co.; Hamilton Rubber Manufacturing Co.; Hewitt Rubber Corporation; Home Rubber Co.; Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc., Mercer Rubber Co.; Pioneer Rubber Mills; Quaker City Rubber Co.; Republic Rubber Co.; Thermoid Rubber Co.; U. S. Rubber Products, Inc.; Whitehead Bros. Rubber Co.

The Rubber Manufacturers Association and the Code Authority for the Rubber Manufacturing Industry are so intermingled in the administration of the activities of each that it does not appear feasible to separate one over the other. For instance, the Rubber Manufacturers Association collects dues and assessments for its own maintenance and for the maintenance of the code authority and claims that the management of the finances of the code authority are, therefore, not within the jurisdiction of the National Recovery Administration. The members of the Divisional Code Authority for Mechanical Rubber Goods are members of the Rubber Manufacturers Association and are corporate officers of members of the Mechanical Rubber Goods Division of the Code Authority.

From the facts stated it is believed that the parties just named have created and are now carrying on a major conspiracy in restraint of trade. The question is to what extent, if at all, the proposed respondents have sanctuary in the code.

Disregarding for the moment the conflicting provisions of the National Industrial Recovery Act respecting the antitrust laws, it is pointed out that the conspiracy was created some 6 months before a code was approved and is therefore to that extent without any possible protection from the National Industrial Recovery Act. The circumstances make it reasonable to believe that in securing the code the purpose and intent of the proposed respondents was to perpetuate the existing conspiracy so far as possible in the code itself. Various activities wholly outside of code provisions, but carried on under the guise of legitimate code activities side by side with activities actually permitted by the code, are almost inextricably intermingled, and the legitimate are tainted by the illegitimate. Considered alone, to the extent that is possible, law violations exist which constitute adequate grounds for a proceeding by the Commission.

The provisions of the code respecting the filing of prices and prohibiting changes therein except in a manner specified and after a waiting period of 10 days; the use of standard terms of sale eliminating all competition through such means; and the classification of customers, are all acts which heretofore have been considered monopolistic practices violative of the Sherman and/or Federal Trade Commission Acts.

Section 3 (a) contains the proviso:

"That such code or codes shall not permit monopolies or monopolistic practices."

Section 5 of the same act provides:

"While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States."

As to the Commission, this apparent conflict may be clarified by the provision in section 3 (b) of the National Industrial Recovery Act.

"* * * but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such act, as amended."

In approving a code the National Industrial Recovery Act requires a finding by the President:

"(2) That such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title."

Article VIII of chapter I of the Code of Fair Competition for the Rubber Manufacturing Industry reads:

"No provision of this code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises."

The undisclosed activities of the proposed respondents which preceded the approval of the code, the manner of application of the code provisions and the ultravires acts of the code authority are obviously violative of the intent of the President in approving the code. A proceeding against even those activities covered by the code does not necessarily contravene the finding by the President—he could not anticipate the form in which code provisions would be applied. The promulgation of the Executive order of January 20, 1934, permitting appeals to the Commission shows that the President recognized the possibility of misuse of code provisions and sought to provide against it.

Attention is called, without recommendation, to paragraph 6 of "Method of procedure in handling complaints arising under or in connection with the National Industrial Recovery Act" which reads in part:

"After the preliminary investigation of the type ordinarily made in unfair competition cases is completed, and before determination as to whether formal complaint shall issue, the nature of the case and character of the data obtained should be called to the attention of the appropriate National Recovery Administration official, without however disclosing the name of the complainant. It may be that these officials will thereupon take such appropriate action by way of altering a code provision or making a new code provision as in itself will eliminate the practice on which complaint was based. When the nature of the complaint is brought to the attention of the appropriate National Recovery Administration official, the case shall be submitted to the Commission for such action as it deems necessary in discharge of its statutory duties."

It is recommended that complaint issue charging the organizations, companies and individuals heretofore named with conspiracy in restraint of trade, price fixing, illegal resale price maintenance, and boycotting. It is thought that the complaint might properly, though not necessarily, include the code provisions mentioned above, but because of the questions of policy involved no recommendation is made as to this.

Respectfully submitted.

JAS. A. HORTON, *Chief Examiner.*

MARCH 20, 1935.

FINAL REPORT OF INVESTIGATING ATTORNEYS OF THE FEDERAL TRADE COMMISSION ON RUBBER MANUFACTURERS ASSOCIATION, INC., ET AL.

Application of city of Milwaukee, Wis., for issuance of complaint against the Rubber Manufacturers Association, Inc., et al.

Final report 1-8120

I. PARTIES

Applicant: This application is docketed in the name of the Central Board of Purchases, City of Milwaukee, Wis., which, on February 11, 1935, complained to the Commission that in purchasing fire hose for use in the city's fire department it had recently been confronted with identical bids from all fire-hose manufacturing companies from whom it solicited bids. It was recited in the same letter that a jobber in the city of Milwaukee, the N. L. Kuehn Co., had quoted a price lower than the uniform prices submitted by all other bidders, but it (the Kuehn Co.) was unable to make delivery for the reason that it could not find any manufacturer or other source, who would supply the hose.

Other applicants active in complaining to the Commission are the city of New York, through Mayor F. H. LaGuardia; the city of Los Angeles; the city of Cincinnati, and the United States Conference of Mayors, Joseph W. Nicholson, secretary, who complains in behalf of many cities and municipalities.

Respondent: The Rubber Manufacturers Association, Inc., a Connecticut corporation, with statutory address at 444 Madison Avenue, New York City,

and the manufacturers of so-called "mechanical rubber goods," members of the Rubber Manufacturers Association, and the Mechanical Rubber Goods Division of the Code Authority for the Rubber Manufacturing Industry; the Code Authority of the Mechanical Goods Division, J. H. Connors, chairman; H. N. Young, C. D. Garretson, and the administrative officers thereof, Mr. A. D. Kunze, secretary, and Mr. Hamilton Abert, assistant secretary; particularly considered as respondents, are the underwriters' fire-hose manufacturers, who are subscribing members of the Mechanical Rubber Goods Division of the Rubber Manufacturing Industry Code and members of the Rubber Manufacturers Association. They are:

Acme Rubber Mfg. Co., Trenton, N. J.—corporate organization undetermined.

American Rubber Mfg. Co., Park Avenue and Watt Street, Oakland, Calif.—corporate organization undetermined.

Boston Woven Hose & Rubber Co., a Massachusetts corporation, having its principal place of business at 29 Hampshire Street, Cambridge, Mass. Its officers are: J. Newton Smith, president and treasurer; W. L. Larkin, Secretary.

The Cincinnati Rubber Mfg. Co., an Ohio corporation having its principal place of business at Norwood, Ohio. Its officers are: J. F. Joseph, president; E. J. Henzerling, secretary-treasurer.

Continental Rubber Works, a Pennsylvania corporation having its principal place of business at Erie, Pa., Its officers are: T. R. Palmer, president; P. H. Henkel, secretary; H. M. Reinecke, treasurer.

The B. F. Goodrich Rubber Co., a Michigan corporation, having its principal place of business in Akron, Ohio. Its officers are: J. D. Tew, president; S. M. Jett, secretary; V. I. Montenyohl, treasurer.

The Goodyear Tire & Rubber Co., Inc., a Delaware corporation, having its principal place of business at 1144 East Market Street, Akron, Ohio. Its officers are: P. W. Litchfield, president; W. D. Shiltz, secretary; P. E. H. LeRoy, treasurer.

Hamilton Rubber Manufacturing Co., a New Jersey corporation, having its principal place of business at Trenton, N. J. Its officers are: H. T. Cook, president; A. Boyd Cornell, secretary-treasurer.

Hewitt Rubber Corporation, a New York corporation, having its principal place of business at Buffalo, N. Y. Its officers are: Thomas Matchett, president; F. G. Cooban, secretary; E. K. Twombly, treasurer.

The Home Rubber Co., a New Jersey corporation having its principal place of business at Trenton, N. J. Its officers are: Charles E. Stokes, Sr., president; Charles E. Stokes, Jr., vice president and assistant treasurer; George T. Gretton, secretary.

The Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc., a New Jersey corporation having its principal place of business at Passaic, N. J. Its officers are: S. Simpson, president; M. L. Judd, secretary; F. L. Curtis, treasurer.

Mercer Rubber Co., Hamilton Square, N. J., corporate organization undetermined.

Pioneer Rubber Mills, San Francisco, Calif., corporate organization undetermined.

Quaker City Rubber Co., a Pennsylvania corporation, having its principal place of business at Wissinoming, Pa. Its officers are: H. R. Shellenberger, president; F. L. Jones, secretary-treasurer.

The Republic Rubber Co., an Ohio corporation, having its principal place of business at Youngstown, Ohio. Its officers are: A. A. Garthwaite, president; E. M. Ikirt, secretary-treasurer.

Thermoid Rubber Co., a New Jersey corporation, having its principal place of business at Trenton, N. J. Its officers are: L. K. Leaver, vice president; R. H. Temple, treasurer; F. H. Holler, Jr., secretary.

U. S. Rubber Products, Inc., a New Jersey corporation, having its principal place of business at 1790 Broadway, New York City. Its officers are: F. B. Davis, Jr., president; Eric Burkman, secretary; W. H. Blackwell, treasurer.

Whitehead Brothers Rubber Co., a New Jersey corporation, having its principal place of business at Trenton, New Jersey. Its officers are: F. B. Williamson, Jr., president; B. E. Marean, vice president; C. W. Appleget, secretary; R. J. Goehrig, treasurer.

(See pp. 91, 97–113, 114–118, 119, 120.)

II. CHARGES

Conspiracy in restraint of trade; price-fixing; customer classification; boycott, and resale price maintenance. The investigation has, in the main, however, had as its objective a determination of the extent to which the application of the provisions and amendments of code no. 156 for the rubber manufacturing industry, as the same has been administered and carried out by the Rubber Manufacturers Association and/or the code authority, enters into or is responsible for the charges as recited.

III. STATEMENT

The docketed application in this case was received at the New York Office of the Commission on the morning of March 6, 1935, accompanied by imperative direction of the chief examiner that *investigation of the same take precedence over all other matters and that the respondent be interviewed no later than 1 p. m. of the same date.* Since the receipt of the chief examiner's direction, the facilities of the entire New York office have been drawn upon in carrying out the direction. The undersigned examining attorneys appreciate that certain mechanical details, such as the corporate organization of some of the respondents, interviews with customers, etc., are lacking as this report is transmitted, but no apology is made for the facts and conclusions hereinafter set forth as not being accurate or complete.

1. THE RUBBER MANUFACTURERS ASSOCIATION, INC.

The Rubber Manufacturers Association, Inc., is a Connecticut corporation. Its statutory address is 444 Madison Avenue, New York City; Mr. A. E. Viles is the present president and general manager of the association. The organization has as members, 148 manufacturers of rubber products of various kinds, inclusive of cement, elastic fabric, rubber flooring, rubber footwear, golf balls, hard rubber, heels and soles, insulated wire, mechanical rubber goods, rebuilt tires, sponge-rubber products, rubber sundries, tires, and tubes, tire and tube accessories (see p. 98 et seq. for names of members and names of other manufacturers constituting collectively the rubber manufacturing industry of the United States).

Information provided by the officials of the Rubber Manufacturers Association is to the effect that in 1934 the aggregate sales of the members of the Mechanical Rubber Goods Division was approximately $68,000,000. The total sales of the members of the Rubber Manufacturers Association were in excess of $1,000,000,000. A statement of the association's financial operations, assessments, expenditures, etc., is in the file at page 1320 et seq.

The Rubber Manufacturers Association, Inc., has been in existence for a great many years, particularly active as a trade association since 1915. It is correct to state that it was, prior to the promulgation of Code No. 156, a very substantial influence in the rubber industry. Certain it is that it was and is the only outstanding organization of its kind in the rubber industry in the United States. It has been difficult during the entire investigation to separate the Rubber Manufacturers Association, Inc., from the rubber manufacturing industry as the same is organized under Code No. 156, such confusion arising in part from the fact that the code authority for the rubber manufacturing industry is organized with the general manager of the Rubber Manufacturers Association, Inc., as chairman of the code authority. The investigation has disclosed that various officers of the Rubber Manufacturers Association, Inc., are members of the divisional code authorities, and there is shown to be a closely interlocking relationship between the association and the code authority for the rubber manufacturing industry and the subsections set up thereunder.

What is more significant, all assessments levied against the industry are paid to the Rubber Manufacturers Association and by it used in part to defray the expenses of the code authority. *Thus, the authority is not amenable to administrative regulation of its budget,* or so it says. As we understand it, the Rubber Manufacturers Association negotiated no. 156 with the National Recovery Administration, which fact entails that it (the Rubber Manufacturers Association) represented a majority of the rubber manufacturing industry.

2. CODE NO. 156 FOR THE RUBBER MANUFACTURING INDUSTRY

Reference is made to page 90 of the buff file, where will be found Code No. 156 for the rubber manufacturing industry, approved December 15, 1933, and amendments thereto, approved as of April 30, 1934, September 1, 1934, and December 18, 1934. By the authority of this code, the entire rubber manufacturing industry is set up as a self-regulating body and authorized to do certain things which are recited—

"to effectuate the policies of title I of the National Industrial Recovery Act, * * * and its provisions shall be the standards of fair competition for this industry, and shall be binding upon every member thereof."

The code first provides for the creation of—

"The code authority which shall consist of a chairman of the several divisional code authorities, presided over by the general manager of the Rubber Association, who is, as stated, its chairman."

The entire industry is then organized under divisions, which are automobile fabrics, proofing and backing; rubber flooring; rubber footwear; hard rubber; heel and sole; mechanical rubber goods; sponge rubber; rubber sundries; rainwear.

Each division, in turn, has a code authority of its own, created and governed by the following provisions:

"Each division of the industry shall establish a divisional code authority (or divisional authority) to administer this code within such division, subject to the right of the Administrator on review to disapprove any action taken by any divisional authority.

"Each division shall determine the size and character of its divisional authority and the basis of representation which shall prevail within that division, subject to the same provision contained in article II–A, section 2–a."

For any purpose of the report, it is correct to state that after the approval of Code No. 156, the Rubber Manufacturers Association, Inc., with the assistance of the industry, immediately proceeded to put the provisions thereof into effect. We have the word of the president of the association that the entire industry was organized as proposed and permitted by the code, and that such organization has carried out, or is attempting to carry out, each and every provision thereof.

At the time this investigation was initiated, the association was advised that the investigation would be concerned primarily with the determination of the charge of price fixing on fire and chemical hose, but that, in the judgment of the examining attorneys, such a determination would be inseparable, certainly, from a determination of the operation of the mechanical goods division of the code, and to a certain extent, from the operation of the code, as a whole since interlocking control is extant as between the divisional code authority and the code authority.

3. THE MECHANICAL DIVISIONAL CODE AUTHORITY

Code no. 156 for the rubber manufacturing industry provides for the creation of a mechanical rubber goods division (p. 104 et. seq of the code; p. 90, buff file). Investigation shows that the code authority was set up consisting of J. H. Connors, chairman (Mr. Connors is vice president of the B. F. Goodrich Co., Akron, Ohio); Mr. C. E. Garretson, member (Mr. Garretson is president of the Electric Hose & Rubber Co., Wilmington, Del.); Mr. Henry N. Young, member (Mr. Young is vice president of the Hamilton Rubber Manufacturing Co., Trenton, N. J.). These three men function as the Mechanical Divisional Code Authority and all correspondence sent out is signed by such designation, either by A. D. Kunze, the secretary, or Hamilton Abert, assistant secretary.

The investigation shows that with this organization the Mechanical Divisional Code Authority has put into operation the provisions of the code applicable to mechanical goods manufacturers and/or sellers. Such provisions are, in fairly descriptive language:

1. No member or interest to whom or to which the code is applicable, is to sell below his or its cost. (What is cost is to be determined by the application of the Association's Uniform Accounting Manual, exhibit I, herewith.)

2. Uniform (maximum) terms of sale were made applicable to all members and those subject to the code. Such uniform terms of sale included only the giving of 2 percent for cash within 10 days from time of invoicing, and a standard guarantee as follows:

"This merchandise is warranted to be free from defects of workmanship and material. The seller's liability hereunder is limited to the purchase price of merchandise which has failed through defect or, at the seller's option, to the replacing of such merchandise upon its return by the buyer with other merchandise of the quality warrant, and with due allowance made for the service rendered by the merchandise return."

Other provisions determined and made uniform freight allowances, guarantees against price decline, free samples, exclusive missionary sales help, postdating or predating.

3. Classification of customers into categories particularly provided for in the code, viz: Jobbers and mill supply houses; distributors; dealers; mail-order

chain stores; department stores; syndicate buyers; equipment manufacturers; industrials; government: Federal, State, county, municipal; consumers.

4. The filing of selling prices of all manufacturing members of the division, which prices, when filed, should be distributed and made available to the other members of the industry. It is a condition of the code requirement that a filer of prices is to strictly adhere to such prices until a new price is filed, and no new price can become effective until 10 days after such new price filing.

The investigation shows that the Mechanical Divisional Code Authority set up for its own assistance various subdivisions or committees, each of which had immediate concern with those members manufacturing a common product. Such committees were set up for the following groups: Flat belt; V-belt and radiator hose; multiple V-belt; F. H. P.; fan belt and radiator hose—(*a*) original equipment, (*b*) replacement equipment; jar rings; tape; thread; all-rubber hose; molded and braided hose; miscellaneous hose; railroad goods; automobile mats and matting; mats and matting (except auto); backing; molded lathe cut and extruded goods; wringer roll; plumbers' specialties; rubber-covered rolls; inking rolls; general mechanical rolls. (See p. 122.)

The individuals comprising the committees in control of these several groups are shown to be officials of practically all of the larger manufacturers subject to the code. Fire and chemical hose, the subject of special interest to this investigation, comes within the jurisdiction of the "Miscellaneous Hose Subdivision." (p. 123).

4. UNDERWRITERS' FIRE HOSE MANUFACTURERS

The following-named companies, manufacturers of Underwriter fire hose, are part of the Mechanical Divisional Rubber Goods Division. Collectively, as we understand it, they manufacture all of the fire and chemical hose made in the United States.

Acme Rubber Manufacturing Co., American Rubber Manufacturing Co., Boston Woven Hose & Rubber Co., Cincinnati Rubber Manufacturing Co., Continental Rubber Works, Electric Hose & Rubber Co., B. F. Goodrich Rubber Co., Goodyear Tire & Rubber Co., Hamilton Rubber Manufacturing Co., Hewitt Rubber Corporation, Home Rubber Co., Manhattan Rubber Manufacturing Division, Mercer Rubber Co., Pioneer Rubber Mills, Quaker City Rubber Co., Republic Rubber Co., Thermoid Rubber Co., U. S. Rubber Co., Whitehead Bros. Rubber Co.

It should be noted that some of the companies listed, including Continental Rubber Works, Mercer Rubber Co., Thermoid Co., Electric Hose & Rubber Co., do not manufacture fire hose but do merchandise fire hose under their own names, manufactured for them by other manufacturers. Also included in this group is the American LaFrance and Foamite Co. (see pp. ——).

The manufacturers and/or sellers just named sell fire and chemical hose to the Federal Government and its agencies, States, cities and municipalities. All of such customers, of course, purchase the product for use on fire-fighting equipment. Perhaps 50 percent of the combined production of fire hose is sold to the several governmental units just above referred to, the remaining percentage being disposed of to what may be loosely described as industrial accounts, by which is meant factories, railroads, steamship lines, hotels, apartment buildings, office buildings, etc.

5. FIRE HOSE PRICES

(*a*) *Before the code.*—The record shows that the several manufacturers of fire hose, or their agents, sold or quoted the product (Underwriters' specification,

2½-inch, double jacket) at varying prices during 1932, 1933, and 1934, as illustrated by the following table:

Date	Boston	Continental	Goodrich	Goodyear	Hamilton	Hewitt	Home	Manhattan	Quaker	Republic	United States Rubber	Unidentified
1932							0.44				0.60	0.49
	0.59				0.85	0.583		1.07	0.68	0.49	.90	1.40
	[1].2625	[1] 0.231	[1]0.25	[1] 0.334	[1].344				[1].326	[1].35	[1].249	
			[1].847	[1].72				[1]1.57	[1] 1.42	[1]1.04		
									.53			
1933			[2] 1.00					[2] .95	.40		[2] 1.20	[2] .84
									.54			
									.48		.54	[2] .54
									.65			[2] .95
									.822			[2] 1.00
									.74			[2] 1.20
1934 [1] to April												.78
												1.10
	.70	.70	.70	.74		.74		.74	.70		.74	1.40
Apr. 10	.70	70	.70	.70	.70	.70	.70	.70	.70	.70	.70	

[1] New York City specification.
[2] City of Detroit.

We find on this evidence that prior to July 1933 there was keen price competition between the several manufacturers and sellers of fire hose and that after July 1933 and until about April 10, 1934, there was a substantial amount of price competition, the exceptions being sales to large cities, notably, the cities of New York, Detroit, Cincinnati, and probably others.

(*b*) *Prices after the code.*—Investigation shows further that after about April 10, 1934, when all of the manufacturers filed prices with the Mechanical Divisional Code Authority, all filed a price of 70 cents per foot on 2½-inch, double-jacket underwriters' specification hose, without couplings. The table following shows price filings from about April 10, 1934, to date:

Date	Acme	American	Boston	Cincinnati	Continental	Fabric	Goodrich	Goodyear	Hamilton	Hewitt
February	0.70		0.70	0.72	0.70		0.70		0.70	0.74
April		0.70	.70	.70		0.70	.70		.70	.70
July	.74	.74	.74	.68	.74		.74	0.74	.74	.74
Undated			.74					.70		
February 1935			.74				.74			.74

Date	Home	Manhattan	Mercer	New York	Pioneer	Republic	Thermoid	U. S. Rubber	Whitehead	Quaker City
February		0.74	0.70		0.70		0.70		0.74	0.70
April	0.70		.70	0.70	.70		.70	0.70	.70	.70
July	.74	.74	.74	.74	.74	0.74	.74	.74	.74	.74
Undated								.74		
February 1935					.74					

(See sec. IV, pp. 342-568.)

It is thus conclusively shown that after about April 10, 1934, the prices and terms of all fire hose manufacturers were uniform and that they were raised once during the period. This report will now concern itself with the natural and/or artificial reasons (if any there be) which have brought about this enhancement and stabilization of prices.

IV. Code Activities

Code no. 156 for the rubber manufacturing industry makes provision for all of the activities which will now be discussed under separate headings, attempting to set forth what the investigation shows to have been done by the mechanical divisional code authority with respect to each topic.

1. PRICE FILING

(a) Prices filed by manufacturers on standard specification hose

Code no. 156 provides, in chapter VII, article III, section 2 (p. 105):

"Each member of the division shall establish a price schedule for standard goods, as recognized by the division, properly applicable to each classification, and price lists for goods made to recognized standard specifications. Having established such price schedules and price lists, which may be revised from time to time, they shall be filed with the association on or before the date specified by the divisional code authority."

Under article IV, section 1, appears the following provision:

"No member shall sell any standard goods or goods made under recognized standard specifications at prices lower or on terms more favorable than the prices and terms in his price schedule and price list filed pursuant to article III of this chapter unless he has first filed revised schedules and lists to take effect in not less than 10 days from date of filing. The association shall promptly, after receipt of such revised schedules and lists, notify all members affected."

The divisional code authority took action to carry out these provisions at a meeting held February 2, 1934, which action is recorded as follows:

"By motion duly adopted, the divisional code authority decided to call for the official filing of prices, on or before February 19, on all products coming within the scope of the mechanical divisional code." (The rest of the motion had to do with the waiving of the strict observance of the cost provisions of the code, article VII, chapter I.)

Pursuant to this action of the code authority, the record shows that some of the larger fire-hose manufacturers filed prices on fire hose (sec. IV). Inspection of all price filings as made by the manufacturers, shows that many of the smaller companies did not initially file any prices. Again, taking the fairly comparable item, i. e., 2½-inch, double-jacket underwriters' specification fire hose, the initial price filings were as follows:

	Uncoupled
Acme Rubber Manufacturing Co	$0.70
Boston Woven Hose & Rubber Co	.70
Cincinnati Rubber Manufacturing Co	.72
Continental Rubber Works	.70
B. F. Goodrich Co	.70
Goodyear Tire & Rubber Co	.74
Hamilton Rubber Co	.77
Hewitt Rubber Corporation	.74
Manhattan Rubber Manufacturing division	.74
Pioneer Rubber Mills	.70
U. S. Rubber Co	.74
Whitehead Bros. Rubber Co	.74

The other manufacturers did not initially file any prices on fire hose. No further call for price filings is recorded in the minutes of the code authority, but, as section IV of the file shows, each and every one of the fire hose manufacturers, called the fire hose group, did, beginning about April 4, 1934, file or refile a schedule of prices on all types of fire and chemical hose. The records of the association show that such filings were made upon a mimeographed blank, which blank, in practically every particular, corresponds with the yellow pages of section IV (see p. 344).

Inspection of this price filing shows that to all intents and purposes the prices of each and every filer were uniform, and, with respect to the price of underwriter specification, 2½-inch, double-jacket, uncoupled hose, was 70 cents per

foot. Each price filing carried, with respect to discounts allowed to customer classifications, the following:

Class of trade	Hose	Treatment of jacket	Couplings	Attaching customers' couplings
	Percent			
Distributors	10-10-5	Net	Net	Net.
Jobbers, mill supply houses	10-10-5	do	do	Do.
Equipment manufacturers	10-10-5	do	do	Do.
Mail-order houses	net	do	do	Do.
Chain stores	net	do	do	Do.
Dealers	10	do	do	Do.
Department stores	10	do	do	Do.
Syndicate buyers	10	do	do	Do.
Industrial:				
"A"	10	do	do	Do.
"B"	10	do	do	Do.
Consumers	10	do	do	Do.
Federal Government	10-10-5	do		Do.
State, city, and municipal governments	net	do	do	Do.

The record further shows that pursuant to the recommendation of the code authority that prices on this item should be refiled quarterly, each fire hose manufacturer did, on July 1, 1934, refile upon the same form (then apparently printed by the association) new prices. Again, all prices filed by all filers were uniform, and, in the case of 2½-inch, underwriters' specification, double-jacket hose, was 74 cents per foot, or a price raise of 4 cents per foot. The filing made on July 1, 1934, eliminated from the discounts accorded to the various trade classifications 5 percent from the distributor, jobber, equipment manufacturer, and Federal Government classifications.

On January 1, 1935, most, if not all of the manufacturers refiled prices which were again, in all respects, uniform and unchanged from the price filing of July 1, 1934, the price of 2½-inch hose remaining at 74 cents per foot, and those who did not refile have considered the July 1, 1934, prices still in effect. There is an exception in the case of the Federal Government, which, since January 1, 1935, has been quoted the filed price by all manufacturers but advised that it may deduct 15 percent.

(b) Prices filed by manufacturers on customers' specification hose

Avoiding at this point the question as to whether or not Code No. 156, chapter VII, provides for, or permits the filing of prices on hose made to customers' specifications, the record shows that the Mechanical Divisional Code Authority, in point of fact, did undertake certain activities with respect thereto.

The most outstanding example is the call for the filing of prices covering the fire-hose specifications for the city of New York. The first call was made by the divisional code authority, June 26, 1934 (p. 130). On June 27, 1934, the code authority sent out another letter to members of the fire-hose subdivision, in which attention was called to the fact that the city's invitation was inclusive of a provision for payment of 2 percent for cash in 60 days and a 3-year guarantee. The members were told to disregard this and bid only according to code provisions, i. e., 2 percent, 10 days and the code guarantee (p. 137). (See also title V, 1 (a) city of New York, post.)

In a bulletin to members, dated July 17, 1934, attention was called to a bid about to be opened by the city of Los Angeles. Members were told to quote the filed price "Exclusive of State sales tax" (p. 171). Section II, pages 125–182, contains a multiple number of examples where the divisional code authority has pointedly brought to the attention of the fire hose members, various types of differences between special city, Navy, Army, and municipality specifications, and standard specifications, and indicated that members must make due provision for such differences. The result sought and obtained was, of course, uniformity of bids or quotations.

(c) The enforcement of filed prices by the code authority

The record shows that after the mechanical divisional code authority secured price filings from all manufacturers of fire and chemical hose, in April 1934 it investigated and rectified every deviation from such filed prices. It is shown that the authority did not limit its activities to subscribing members or those to

whom the code was applicable by reason of being "a member of the industry". It took steps to see to it that every manufacturers' jobber quoted prices in conformity with those prices filed by the several manufacturers of the product. It can be as well stated here as anywhere that this practice and modus operandi applied not only to fire hose but to each and every item coming within the operation of the Mechanical Rubber Goods Division.

Those activities which were undertaken are fully established by evidence taken from the files of the Rubber Manufacturers Association (mechanical divisional code authority), and such evidence is in the file (secs. IV to XIII). The mechanical divisional code authority is shown to have operated in substantially the same manner in each instance, and the references above contain all the details with respect to at least 20 instances of departure from filed prices, and reference to 50 more.

Because of the fact that bids to Federal, State, city, and municipal agencies were open to public inspection, and, therefore, readily checked, most of the code authority's filed price investigations were made in connection with bids or quotations to such agencies. Contrarily, little evidence was found of filed price checking with industrial purchasers, principally for the reason that if discounts were given, the recipient, of course, did not complain to the code authority or advise other hose manufacturers or sellers. The typical investigation will now be illustrated:

PANAMA CANAL SCHEDULE 3027, OPENED FEBRUARY 13, 1935

Letter from Quaker City Rubber Co., dated February 14, 1935, to secretary of code authority:

"Confirming our telephone conversation of yesterday regarding prices quoted below schedule on the above subject inquiry.

"We have been advised that on class 37 covering 1,000 pounds of one-sixteenth-inch thick wire, inserted rubber sheet packing, made in accordance with Federal Specification HHP-161, the Boston Belting & Rubber Co. quoted a price for the lot of $342. The schedule list is $0.4509 per pound, totaling $450.90, less 15 percent.

"On class no. 41, item 194—covering 5,000 feet of 2½ inch double jacket cotton rubber lined fire hose made to Federal Specification ZZ-H-451, coupled—pin lug couplings, the schedule price is $0.7994 per foot, totaling $3.997 less the Government's 15 percent.

"On this item Boston Belting & Rubber Co. quoted a price of $0.6794 per foot, total $3,397 net.

"According to the information on the schedule submitted by Boston Belting & Rubber Co., the manufacturer of the material upon which they are quoting is the Stokes Rubber Co.

"Will you kindly have this bid investigated, and oblige" (p. 1031).

On the same date, February 14, 1935, the Secretary of the Mechanical Divisional Code Authority wired A. L. Flint, general purchasing officer, Panama Canal:

"We wish to protest the bid of the Boston Belting & Rubber Corporation in connection with your circular 3027 bids opened February 13 in view of the fact they were below filed prices class 37, item 184, filed price $450.90, Government entitled to deduct 15 percent would leave net figure of $383.26, Boston Belting bid $342. Class 41, item 194, filed price $3,997, subject fifteen percent deduction by Government would equal $3,397.45. Boston Belting Co. bid $3,397. May we bespeak your cooperation to the end that you disregard Boston Belting Co.'s bid? Kindly advise collect (p. 1030).

On February 21, 1935, the code authority issued the following bulletin to the fire-hose group:

"SUBJECT: OFFICIAL FILING OF PRICES FIRE HOSE & PACKING—PANAMA CANAL SCHEDULE 3027—BIDS OPENED FEBRUARY 13

"May we again call your attention to a bid by the Boston Belting & Rubber Corporation.

* * * * * * *

"We have contacted the Boston Belting & Rubber Corporation direct on both the above items and have been unsuccessful in getting them to withdraw their price. Their contention is that they did not have any filed prices on the packing, and on the hose, they said that they had not received any filed prices until the 1st of February and that their bid had been sent in prior to that date.

* * * * * * *

"In view of the fact that Boston Belting & Rubber Corporation have quoted prices below manufacturers' filed prices, and also that orders covering the above would be easy to recognize as they are made to specifications, will you kindly advise your attitude if offered these orders, inasmuch as Boston Belting & Rubber Corporation would not correct or withdraw their prices" (p. 1024, 1025).

On February 22, 1935, responses to this bulletin began to appear:

Hamilton Rubber Co., February 22, 1935: "This will acknowledge receipt of your letter of the 21st, MG–C–1663, on the above subject.

"We wish to advise that should we be offered the orders in question by the Boston Belting & Rubber Corporation we would refuse to accept same inasmuch as their prices were in violation of our filed prices on these items" (p. 1027).

Boston Woven Hose & Rubber Co., February 5, 1935: "Replying to your circular MG–C–1663, we do not manufacture wire-inserted packing and would not care to quote the Boston Belting & Rubber Corporation on hose" (p. 1023).

Manhattan Rubber Manufacturing Division of Raybestos-Manhattan, Inc., February 25, 1935: "We acknowledge your letter of February 21, 1935, no. MG–C–1663, on the above subject.

"In the event of our being called upon to furnish material to Boston Belting & Rubber Corporation in conjunction with this inquiry, it would be necessary for us to refrain from so doing due to the fact that their prices are based on those below established filed prices." (P. 1022.)

The B. F. Goodrich Co., February 25, 1935: "This will acknowledge your letter of the 21st, MG–C–1663.

"Should any of these items be offered us by the Boston Belting & Rubber Co. we would decline to furnish same." (P. 1021.)

United States Rubber Products, Inc., February 26, 1935: "This will acknowledge receipt of your letter MG–C–1663, dated February 21, 1935, under the above subject, calling our attention to a bid by the Boston Belting & Rubber Corporation which is not in accordance with field prices.

"This is to advise that if the Boston Belting & Rubber Corporation offer the United States Rubber Co. these orders, we will not fill them." (P. 1020.)

The Cincinnati Rubber Manufacturing Co., February 25, 1935: "In reply to your letter of the 21st, wish to state we have never submitted prices on mechanical rubber goods to Boston Belting & Rubber Corporation.

"Should the orders for the items discussed in your letter be tendered to us, we would decline to fill them." (P. 1019.)

The Whitehead Bros. Rubber Co., February 26, 1935: "In reply to your letter of February 21, MG–C–1663, concerning recent bids to the Panama Canal on fire hose and packing. We will not fill these orders if they are offered to us below our filed prices." (P. 1018.)

Thermoid Rubber Co., February 27, 1935: "Replying to your letter of February 21, circular MG–C–1663, subject 'Official Filing of Prices—Fire Hose and Packing—Panama Canal Schedule 3027' bids opened February 13, would advise that we will not accept the orders for these items from the Boston Belting & Rubber Corporation if they are offered to us." (P. 1016.)

The Republic Rubber Co., February 27, 1935: "Referring to MG–C–1663, wish to advise that we would not accept the orders referred to provided the same agreement is made by all other manufacturers." (P. 1014.)

Continental Rubber Works, February 27, 1935: "Replying to your letter MG–C–1663 dated February 21, beg to advise in case we should be approached by Boston Belting & Rubber Corporation with the suggestion to secure for them materials as falling within classes 37 and 41 of Panama Schedule 3027, bids opened February 13, we would refuse to be of any assistance to them in making possible supplying of the goods which were quoted at an off-schedule price." (P. 1013.)

The American Rubber Manufacturing Co., February 25, 1935: "Reference your letter of February 21, no. MG–C–1663, on the above subject. We wish to advise that if we are approached by the Boston Belting & Rubber Corporation, to fill their order, we will decline to do so." (P. 1012.)

Pioneer Rubber Mills, February 28, 1935: "If the Boston Belting & Rubber Corporation offer us orders for the specification material on which they have submitted bids below filed prices, we shall decline to fill them." (P. 1009.)

On March 2, 1935, A. L. Flint, general purchasing officer of the Panama Canal, addressed the secretary of the Mechanical Divisional Code Authority in part as follows:

"You are informed that in view of your telegram and the showing of bids received under these two classes, the bid of the Boston Belting & Rubber Co. has been rejected, and awards for these commodities have been made as follows: * * *"

Commonwealth of Pennsylvania

Section VIII of Buff file, pages 916 to 951, shows by a series of letters copied from the files of the Mechanical Divisional Code Authority that on June 30, 1934, the Hamilton Rubber Manufacturing Co. complained to the code authority that R. A. Humphreys' Sons Co., Philadelphia, had recently bid below the filed price on 2½-inch underwriters' fire hose, tenders for which were invited by the State of Pennsylvania. The correspondence referred to completely establishes that the activities of the code authority are set in motion to the end that the Humphreys' company could not purchase this material from any of the rubber manufacturers. On August 15, 1934, the secretary of the association wrote:

"With further reference to your letter of July 30, relative to the above, we have investigated those companies whose products we could recognize, and the answers are as follows:

"Continental has arranged to withdraw their price of 0.522 per foot and to substitute a figure of 0.555 per foot.

"Goodall stated the inquiry did not specify the size of hose so they quoted on three different sizes.

"Hewitt Rubber Corporation did the same thing.

"This is not a very satisfactory solution but is the best we could do not being able to find out whose hose the other bidders were quoting on." (p. 932).

On October 23, 1934, the same cycle was initiated by a letter from the Quaker City Rubber Co., addressed to the code authority, now quoted, in part: "We have an abstract of the bids submitted to the State department at Harrisburg, Pa., and the price quoted by the Stockwell Rubber Co., who handles the Boston Woven Hose & Rubber Co.'s line, is 62 cents per foot, coupled, totaling $310.

"Will you kindly have this matter taken up at once so that the price may be corrected or the bid withdrawn."

On October 31, 1934, the secretary of the code authority wrote: "We have a letter today from Boston Woven Hose & Rubber Co. with which they sent us a copy of Stockwell's letter returning the notification of the award of the order to them and refusing to accept it" (p.921).

Huntington Borough, Pa.

The file contains (p. 850) copy of a pencil memorandum, dated April 11, "2½-inch fire hose, C. H. Miller, Hardware Co., Huntington, Pa., pin lug, W. G. treated, 76 cents."

On April 20, 1934, the secretary of the code authority wrote the Quaker City Rubber Co. (p. 849):

"Will you please immediately investigate a report we have received that the C. H. Miller Hardware Co. recently quoted Huntington Borough, Pa., on 2½-inch D. J. fire hose, wax- and gum-treated, equipped with pin lug couplings, a price of 76 cents per foot coupled.

"If this report is correct, the price of 76 cents per foot is in violation of your filed prices on underwriters fire hose both prior to April 10 and since April 10, on which date you refiled your prices.

"Please favor us with all facts in the case and oblige." (P. 849.)

On July 20, 1934, the Quaker City Rubber Co. explained the situation:

"In looking up our records on this deal we find that we did not quote the C. H. Miller Hardware Co. on this hose. However, we did secure an order direct from the Borough of Huntington, Pa., for 1,000 feet of 2½-inch wax- and gum-treated hose at $0.76 per foot net, coupled. This price is correct and is in accordance with our filed price because the hose was sold at $0.70 per foot, uncoupled plus $0.05 per foot for the wax treatment, plus $0.01 per foot extra for attaching customer's own couplings which they sent us. We did not furnish new couplings.

"Hope this explains the matter to your entire satisfaction." (P. 845.)

Town of Dracut, Mass.

On February 25, 1935, the Manhattan rubber manufacturing division of Raybestos-Manhattan, Inc., wrote the secretary of the code authority:

"It has been reported to us that the Acme Rubber Manufacturing Co. through their Boston (Mass.) office quoted the town of Dracut, Mass., on February 21, 1935, on 2,000 feet of 2½-inch double-jacket treated fire hose coupled in 50-foot lengths at $0.90 per foot.

"Inasmuch as no hose to any municipality is to be sold at prices lower than the prevailing schedule on underwriters hose, it is our belief that no price should be quoted for 2½-inch double-jacket treated fire hose coupled below $0.92 per foot.

"We will appreciate your investigating this matter and advising us the outcome." (P. 876.)

On February 25, 1935, the Acme Rubber Manufacturing Co. wrote the code authority as follows:

"Enclosed please find copy of letter of this date addressed to Mr. F. H. Albee, manager of our Boston store, in regard to mistake made in quoting price on 2½-inch double-jacket C. R. L. underwriters fire hose wax and gum treated, on recent bid at Dracut, Mass.

"We noticed the mistake in letter received in this morning's mail from Boston.

"We enclose copy of our wire of this morning addressed to Mr. Albee requesting him to correct his quotation." (P. 873.)

On February 27, 1935, the Mechanical Divisional Code Authority advised the complainant, Manhattan rubber manufacturing division:

"On February 25 you wrote us in connection with the above. We are advised by the Acme Rubber Manufacturing Co. that their bid has been corrected." (P. 872.)

In all, the record contains in sections VII to XIII all of the evidence in connection with price investigations and adjustments with the following interests:

War Department, Fort Peck, Mont.; North St. Paul, Minn.; Newclarus, Wis.; Pueblo, Colo.; United States Engineers, Kansas City, Mo.; Navy Department, New York; city of Nehawka, Nebr.; Gullette Gin Co., Amite, La.; Seaboard Air Line Railroad; New York Central Railroad; New York City (department of water supply); (p. 790); League of Wisconsin Municipalities (p. 796); United States Forestry, Portland, Oreg. (p. 813); Camp Holabird, Baltimore, Md. (p. 830); New York State (temporary emergency relief (p. 851); Village of Struthers, Ohio (p. 856); Seattle, Wash. (p. 877); State of Ohio (p. 887); United States Forestry Corporation, Ogden, Utah (p. 893); Niles, Mich.; Norfolk, Va.; Laredo, Tex.; Leighton, Pa.; Lincoln, Nebr.; Okemah, Okla.; town of Paulsboro, N. J.; city of Philadelphia; Belmont, N. Y.; Evansville, Ind.; United States Engineers, Philadelphia, Pa.; Fort Madison, Iowa.

Other investigations made by the code authority were examined, but not copied. They are, however, of the same general character as established by the foregoing examples and references:

Ellenville, Ga.; Elgin, Tex.; Lexington, Ky.; Rome, Ga.; Racine, Wis.; Blanford, Mass.; Whitehall, Mont.; Prophetstown, Ill.; Sturgeon Bay, Wis.; Philadelphia Electric Co., Mars, Pa.; McPherson, Kans.; McNeil's Island, Wash.; McCormack, S. C.; Mount Angel, Fla.; Medford, Mass.; Lynchburg, Va.; Memphis, Tenn. (U. S. Engineers); Quartermasters Supply, Brooklyn, N. Y.; Mobile, Ala. (War Department); Horton, Lewis County, Wash.; Goshen, Ind.; Manhasset-Lakeville, Long Island, N. Y.; Cincinnati, Ohio; High Point, N. C., Hillsboro, Tex.; Mangenville, Md.; Dallas, Tex.; Saginaw, Mich.; Bethlehem, Pa.; Watertown, Wis.; San Antonio, Tex.; Cyrus, Minn.; Cudahy, Wis.; San Bernardino, Calif.; Clarktown, Mass.; Syracuse, N. Y.; Stewartsville, N. J.; Columbus, Ohio; Donora, Pa.; Trenton, Tenn.; Dayton, Ohio; Cambridge, Mass.; Detroit, Mich.; Boston, Mass.; Albany, N. Y. (see pink file).

2. UNIFORM (MAXIMUM) TERMS OF SALE

Just as prices varied prior to the adoption of the code, and more particularly, before the joint action of the mechanical rubber goods division of the association, in the latter part of June 1933, so did terms of sale vary as between the several fire hose manufacturers. Allowances for freight, 2 percent for cash in 60 days, quantity discounts and guarantees for as long as 3 years, were the practice of the industry rather than the exceptions.

It can be accepted as a fact that the industry recognized that unless these factors were eliminated or made exactly the same as between the several manufacturers, there could be no ultimate uniformity of price. This conclusion, of course, comes from the fact that any variance in any of the recited considerations constituted in last analysis a discount and a departure from the fixed price.

Code No. 156 provides in article V of the Code for the Mechanical Rubber Goods Division:

"SECTION 1. Uniform terms of sale shall be established by the divisional authority, subject to the approval of the Administrator, which may include freight paid or allowed to customer. In no case shall the freight allowed by any member to any customer be more than the published freight rate by the route used from the member's factory to the destination.

"SEC. 2. No member of the division shall offer or give any discounts, other than those specified in such member's price schedules or price lists on file with the association. After January 1, 1934, no member of the division shall offer or give any rebates or bonuses to any classification of buyers.

"SEC. 3. (This section has to do with the standard warranted, heretofore referred to in this report.)

"SEC. 4. No guaranty against decline of price on contracts or orders shall be made to anyone—accepting, however, such items of seasonal character as may be specified by the divisional authority, subject to the approval of the Administrator. Any such guaranty shall apply only to the unshipped portion of any contract or order.

"SEC. 5. No member of the division shall enter the time contracts.

"SEC. 6. No member of the division shall indulge in the practice of free goods.

"SEC. 7. No member of the division shall extend exclusive missionary sales help to any one distributor in excess of 90 days in any 1 year.

"SEC. 8. No member of the industry shall postdate or predate an invoice."

The matter seems to have first come before the Mechanical Divisional Code Authority in a meeting held on March 30, 1934, in the minutes of which appear (p. 217) the following:

"Pursuant to chapter VII, article V, section 1 of Code 156, maximum terms of sale established by the Mechanical Rubber Goods Divisional Code, are as follows:"

There then follows on the page referred to, and on pages 220 and 221, rulings and/or interpretations with respect to consigned goods, the offering of different prices to members of the same class of trade, published freight rates and prices in good faith to meet competition.

In the following meeting of the Mechanical Divisional Code Authority, held on April 11, 1934, the subject matter of maximum selling terms was continued (see pp. 223–225). The subjects considered were guaranties, adjustments, consignments, and replacements. At this time the industry had already approved the 2 percent for cash and 10 days, as the maximum discount allowable against any quotation for fire hose or other product coming within the jurisdiction of the Mechanical Goods Division.

While the code itself provided the uniform (maximum) terms of sale must be approved by the Administrator, we have been unable to find any definite evidence that the Administrator ever approved of the terms of sale, as approved from time to time by the Mechanical Divisional Code Authority. Some light is thrown on the subject by a circular letter sent out by the code authority on March 1, 1935 (p. 197), with reference to New York City requirements for fire hose, then on invitation for bids.

"The uniform (maximum) terms of sale approved by the Administrator, in accordance with Code 156, chapter VII, article V, section 1, provides for cash discount terms of 2 percent, 10th proximo, net 60 days, on practically all mechanical rubber goods, commonly purchased by municipalities.

"The city of New York has a long-standing policy which evidently is difficult to change, whereby it calls for terms of 2 percent, 30 days, from date of invoice on all purchases, and should a bidder take an exception to the required terms or offered terms, which are less liberal than those called for, the city considers the price offered in connection therewith as net. This situation has caused considerable confusion both to the city in the evaluation of bids and to our industry in the proper application of the uniform (maximum) terms of sale. These conditions were brought to the attention of the M. D. C. A., and after a careful survey of all the circumstances and realization of the difficulty and time involved in an endeavor to have the city change its terms, the M. D. C. A., pending final clearance of the question, decided to make an exception of privileges made by the city of New York in respect to the application of the uniform terms of sale, to the extent that members of the industry, so desiring, may accede to the terms as now called for by the city as a maximum.

"This means that regardless of the conditions referred to in the foregoing quotation, members of the industry, effective immediately, are required to observe the uniform maximum terms of sale, as approved by the administration in all dealings in the city of New York."

This letter was written after one sent out by the code authority on February 18, 1935 (p. 198), in which the code authority presumed to permit bidders on New York City specifications to depart from the uniform maximum terms of sale, as theretofore established by the authority. The reason for the rescinding of the permission was, as I am informed, a letter from the code administrator in Washington, stating that the code authority's action of February 18, 1935, was outside of

any authority which it possessed, and that its action was contrary to the code because it was done without the approval of the administrator.

We find as a fact that the code authority, operating under color of the provisions of the code, has eliminated and/or made uniform each and every condition of sale, as the same are made or are to be made by the members of the group, and that it has enforced each and every provision by an exercise of the authority possessed and/or assumed by it.

3. CUSTOMER CLASSIFICATION

Chapter VII of Code No. 156, article III, provides:

"A. MARKETING STANDARDS

"SECTION 1. To assist in providing uniform trade practices and preventing discrimination and unfair competition, group customer classifications, definitions, based upon differences, in costs and services rendered, may be adopted by the Division, subject to the approval of the Administrator, for the following classifications under the title of 'Definitions of buyers of mechanical rubber goods', and such definitions shall be filed from time to time with the association.

"Classification of buyers of mechanical rubber goods: Jobbers and mill-supply houses; distributors; dealers; mail order chain stores, department stores; syndicate buyers; equipment manufacturers; industrials; government; Federal, State, county, Municipal, consumers.

"If such definitions shall, by virtue of their application, pursuant to this chapter, work hardship on any member of the Division or customer, such member or customer may apply to the divisional authority, which shall have power to reclassify such customer as justice may require."

Prior to the submission and approval by the divisional authority of the definitions provided for in the above-quoted article, the National Recovery Administration, on July 20, 1934, issued office memorandum no. 267, which states:

"The following clause reflects N. R. A. policy on this matter and should be substantially followed wherever provisions for classification of customers are included in codes:

"'The code authority shall cause to be formulated and keep current a classification of all types of customers of the industry. Such classification shall be subject to the disapproval of the Administrator and shall contain (*a*) a complete list of all the classes of customers of the industry, including a class to cover every known type of customer; and (*b*) definitions or descriptions of the several classes in terms of functions performed, or in other appropriate terms, such as purchases of defined quantities.

"'After submission to the Administrator, if there is no disapproval or request for suspension of action within 20 days, full information concerning the classification shall be made available to all members of the Industry. No one shall, by intimidation, coercion, or other undue influence, cause or attempt to cause the inclusion of any customer in, or the exclusion of any class of customers from, the classification, or the use of uniform or stipulated prices, discount, or differentials, and each member of the industry may, at all times, classify his own customers in accordance with his own judgment.'

Administrative Order No. 156-38, dated October 2, 1934, approved the group customer classification definitions submitted by the Mechanical Divisional Code Authority. At a meeting of the code authority held October 29-November 2, 1934, the following procedure with respect to the reclassification of accounts was adopted:

"1. The Mechanical Divisional Code Authority will receive for approval recommendations of any subdivision, group or subgroup of the mechanical division with respect to 'reclassification' of accounts, provided such recommendations are the result of a majority vote in volume and number of all code members of the subdivision, group or subgroup involved.

"2. The Mechanical Divisional Code Authority will review requests, complaints, and other communications received from individual members of the mechanical division pertaining to the 'reclassification' of accounts. In the absence of definite recommendations from a subdivision, group, or subgroup, the Mechanical Divisional Code Authority will require the source or sources of supply of the account involved to submit complete facts and figures in accordance with the requirements of the definition and in support of the member's classification of the account thereunder.

"3. The decision of the Mechanical Divisional Code Authority will be based on the merits of each case and pursuant to Code No. 156, chapter VII, article III, section 1, 'as justice may require'." (P. 289, buff file.)

The facts developed in the course of this investigation establish that long prior to the approval of group customer classification definitions by the Administrator, the Mechanical Divisional Code Authority was active in classifying and reclassifying customers. It also appears that such activities were not initiated by any member of the division or customer claiming that the application of said definitions were a hardship, but, on the contrary, generally followed complaints of members of the industry that a competitor was selling a specified account on terms more favorable than those to which the complaining members felt said customer was entitled.

The minutes of the meeting of the Mechanical Divisional Code Authority, dated April 11, 1934, report:

"At a meeting of the Mechanical Divisional Code Authority held on March 30, the authority approved a procedure recommended by the flat belt, molded hose, and miscellaneous hose groups, whereby members of those groups will refrain from quoting distributors or a distributor's basis of price without having first secured the authority's approval of the classification of the given account as a distributor, pursuant to the definition covering that class of trade." (P. 225, buff file.)

On July 19, 1934, the Mechanical Divisional Code Authority considered advice received that the League of Wisconsin Municipalities had completed arrangements with the American Rubber Manufacturing Co., Oakland, Calif., for the sale of Underwriters' fire hose to member municipalities. They thereupon, by formal motion duly adopted, "instructed the Secretary to communicate with the American Rubber Manufacturing Co., stating that Code No. 156, chapter VII, makes no provision for classification of the league and requesting advice, first, as to the basis of price being quoted the league, and, second, whether member municipalities of the legaue or through the league received concessions beyond the prices filed by the American Rubber Manufacturing Co. on Underwriters' fire hose to 'consumer' and/or 'government (municipal)' classes of trade." (P. 248, buff file.)

In response to the secretary's communication, the Mechanical Divisional Code Authority was advised that the American Rubber Manufacturing Co. appointed the League of Wisconsin Municipalities as its agent in the sale of fire hose in that State, and that municipalities pay the "consumer" and/or "government (municipal)" class of trade filed prices. This explanation was accepted but the secretary was further instructed "to direct the attention of the American Rubber Manufacturing Co. that such a policy is contrary to the general viewpoint of members of the miscellaneous hose subdivision with respect to selling policies on municipal fire hose." (P. 266, buff file.)

From time to time, both prior and subsequent to the approval of the group-customer classification definitions by the Administrator, the Mechanical Divisional Code Authority, as appears from the minutes of its meetings, classified and reclassified accounts. Such classifications were based upon answers to questionnaires sent out to members of the industry familiar with the account's method of doing business. The code authority having made its determination, the members of the industry were notified of its decision. Such notification followed the form of a letter appearing at page 797 of the buff file, reading as follows:

"Please accept this letter as official notification from the Mechanical Divisional Code Authority with respect to the proper classification of the accounts named in exhibit A, attached, under the group-customer classification definitions, approved by the Administrator pursuant to Code No. 156, chapter VII, article III, section 1.

"This classification of accounts is effective January 1, 1935. Any arrangements which embrace prices and terms more liberal than filed prices and terms on flat belt, molded and braided hose, miscellaneous hose, and railroad goods, to the accounts named, according to their classification, must be changed to conform to currently filed prices and terms to the respective classifications as of January 1, 1935.

"Improper classification of accounts is a violation of the code.

"This letter is being addressed to you by 'registered mail' with return receipt requested, so we are not asking for an acknowledgment."

As appears from said letter and the statement of Mr. Abert, the Mechanical Divisional Code Authority is of the opinion that its classification of accounts is binding upon all members of the industry. It further appears from the interviews with fire hose manufacturers that upon receipt of such notices they immediately reclassified the accounts mentioned therein in accordance with the code authority's decision (p. 1226).

In view of the complete uniformity in prices and terms as discussed above, the activities of the code authority in compelling the manufacturers of fire hose to observe its classification of accounts insured the elimination of any competition in price in the sale of this product, to or by customers of the several manufacturers. It is, of course, a fact that the customers who were classified were not "members of the industry" within the code definition and were allocated to a classification without any hearing or chance to be heard. It is apparent that the classification definitions, even as approved, enabled manufacturers arbitrarily to grant discounts or withhold them. This is illustrated by "net" prices to chain stores, department stores, syndicate buyers, municipalities and other customers who, while buying in large volume, nevertheless, paid 20 percent more than a small dealer or jobber. It is apparent that customer classification resulted, among other things, in the elimination of all quantity discounts.

V. Extra Code Activities Undertaken by Rubber Manufacturers Association, Inc., and/or Mechanical Divisional Code Authority

1. SPECIAL CITY CONTRACTS

(a) *New York City*

The original records of the department of purchase of the city of New York disclosed that on bids opened October 11, 1932, it received quotations on New York City specification fire hose ranging from $0.231 to $0.344 per foot. Of the 10 bids received, only 2 were in the same amount; i. e., the bids of Goodyear Tire & Rubber Co. and American LaFrance & Foamite Industries, Inc. (P. 1088, buff file.) Since American LaFrance & Foamite Industries, Inc., is the distributing agency of Goodyear Tire & Rubber Co., it may be stated as a fact that on the occasion of this award, no two of the prices quoted by the various manufacturers of fire hose were identical.

This condition continued until July 14, 1933. On said date, bids were opened and 7 of the 8 bidders quoted a price of 71 cents per foot, the eighth bidder quoting 75 cents per foot. (P. 1102, buff file.) On this occasion, all bids were rejected, the purchasing clerk reporting: "Last price on 200-foot quantity June 9, 1933, $0.47 per foot." (P. 1100, buff file.)

On September 1, 1933, bids were again received for fire hose and the same companies who had bid on the previous occasion all quoted a price of $0.80 per foot with the exception of Manhattan Rubber Co., which quoted 81 cents per foot (p. 1113, buff file). Again bids were rejected and the contract readvertised, and on March 2, 1934, 10 bidders quoted 76 cents per foot, while the Republic Rubber Co. quoted 80 cents per foot (p. 1126, buff file). New York City attempted four more times to obtain competitive bids on fire hose, but on each of these occasions received uniform quotations of 78 cents per foot from all bidders (p. 1081, buff file). They were finally compelled, on September 12, 1934, to award the contract to the B. F. Goodrich Rubber Co. at the 78-cent price (p. 1167, buff file).

On February 11, 1935, the city of New York again opened bids on New York specification fire hose. This time they received 13 bids, all quoting 82 cents per foot (p. 1184, buff file).

The explanation of the sudden rise in the price of fire hose in July 1933 and the rigid uniformity in the bids received by the city of New York thereafter is to be found in the files of the Rubber Manufacturers Association and the Mechanical Divisional Code Authority.

The Mechanical Rubber Goods Division of the Rubber Manufacturers Association made an abortive attempt to adopt a code of business principles in 1933. This project was renewed while the National Industrial Recovery Act was still pending in Congress. On May 31, 1933, a meeting of accountants representing the various manufacturers was held, Mr. C. D. Garretson stating:

"The purpose of the meeting is to develop certain facts of the industry, agree on certain fundamentals, get the capacity of the industry, and costs, *so that the sales executives of your companies may finally agree on uniform selling prices*" (p. 1325, buff file.)

The accountants were directed to submit to Mr. Garretson their company's cost figures on several items, including fire hose, not later than June 6, 1933 (p. 1330, buff file).

It appears that at a meeting of the mechanical rubber goods division of the Rubber Manufacturers Association, at which all manufacturers of fire hose were represented, held June 21–23, 1933, a code of business principles was submitted and it was reported:

"Despite the fact the foregoing 'Declaration of business principles' must be approved by the Industrial Recovery Administration before it becomes binding on all units of the industry, it was the concensus of opinion that all mechanical rubber goods manufacturers represented at this meeting should consider the code to be immediately operative and conduct their future operations in accordance with its provisions" (p. 1291, buff file).

Said code of business principles, among other things, provided:

"No. 4 (a) On goods made to customers' specifications, whether they be railroad, industrial, or government specifications, and on those highly competitive items which are generally recognized by the trade, we will match costs and will adopt a minimum selling price on these items based on the total cost of the most efficient manufacturers, the price so arrived at to be considered the minimum price for all similar goods.

* * * * * * *

"No. 6. To eliminate unfair competition, we hold that it is necessary for us to adopt and rigidly enforce sales prices of our products for our branch stores, as well as enforce minimum resale prices by our jobbers and/or retailers, which shall not be lower than the mimimum prices out of factory branches." (Pp. 1293, 1394, buff file).

On June 29, 1933, Mr. Lambert, of Acme Rubber Manufacturing Co., wired R. H. Goebel, secretary Rubber Manufacturers Association:

"Important that all members mechanical group attending Trenton meeting last week be immediately notified new price schedule becomes effective July 1st as board of directors have tentatively approved our code" (p. 1323, buff file).

It is to be noted that this meeting took place between June 9, 1933, when the city of New York received competitive bids on fire hose, the lowest of which was 47 cents per foot, and July 14, 1933, when no bid was received lower than 71 cents per foot and 7 of the 8 bids received were identical. The inference is inescapable that the action at this meeting was responsible for the bids of July 14, 1933. It is to be further noted that all this occurred 6 months prior to the date of the approval of the code for this industry.

Since the effective date of the code, as appears above, prices quoted on fire hose to the city of New York have continued to be uniform not only as to price but as to terms. The Mechanical Divisional Code Authority was diligent in enforcing code provisions with respect to maximum terms. On bids opened May 16, 1934, Bi-Lateral Fire Hose Co. and Fabric Fire Hose Co. omitted to take exception to the New York City terms and substitute the standard terms imposed by the code (pp. 1146, 1147, buff file). The Mechanical Divisional Code Authority promptly notified said companies and the city of New York of this fact and both of these companies immediately corrected their bids, and fell in line with other bidders (pp. 629–632, buff file).

Following this incident, and on June 26, 1934, the Mechanical Divisional Code Authority directed all members of the industry to file prices on or before July 1, 1934, on 2½-inch double-jacket cotton rubber-lined fire hose and couplings, made in accordance with the specifications of the city of New York (p. 627, buff file). In response to this request and a telegram dispatched on July 2, 1934 (see p. 610, buff file), quotations of 78 cents per foot, coupled, were received from 13 manufacturers, 1 manufacturer filed a price of 82 cents per foot, and 4 manufacturers advised that they did not intend to bid. The industry was notified of this fact by letter dated July 5, 1934, which also reminded them of the maximum selling terms and the code requirements with respect to guarantee (see p. 594, buff file).

On July 10, 1934, Mr. Kunze, secretary of the Mechanical Divisional Code Authority, telegraphed all manufacturers who had filed prices on New York City specification hose as follows:

"Refer circular six four three July fifth covering filed prices New York City specification fire hose and couplings, also refer Viles circular CG three seven July third. In view fact brief being prepared requesting exemption from President's Executive order permitting bidders quote as much as fifteen percent below their filed prices to Federal, State, and municipal Governments and recommendation of code authority that pending decision thereon manufacturers adhere to currently filed prices assumed you intend adhere your filed price New York City fire hose and couplings in connection with July fourteen opening. Wire answer.

"A. D. KUNZE."

(P. 593, buff file.)

All manufacturers to whom said telegram was addressed advised Mr. Kunze that they would adhere to the filed price on this bid and would not take advantage of the President's Executive Order 6767 (pp. 578 to 592, buff file). It is to be

noted that the reply of Thomas Robins, Jr., of Hewitt Rubber Corporation, was as follows:

"Re tel. our New York fire-hose bid will be seventy-eight cents unless others fail reply your telegram or state intention quote below their filed price" (p. 578, buff file).

The result of this action was that the 14 bids received by the city of New York on July 14, 1934, were identical. Mr. Forbes, Commissioner of Purchase of the City of New York, thereupon wrote Mr. Kunze as follows:

"We are rejecting all bids and readvertising for bids on our proposed purchase of fire hose. Fortunately, our present supply does not make it imperative that we enter into a contract at once. Meanwhile, we are giving your members another chance to come down to earth in price.

"I had assumed that all the members of your code authority had read and understood the President's recent Executive order, which permitted a 15-percent reduction in code prices without violation of the code." (P. 577, Buff file.)

Following further correspondence between Mr. Forbes and Mr. Kunze, a conference between representatives of the city of New York and of the code authority was arranged. The following is a copy of Mr. Kunze's memorandum of said conference held on July 25, 1934:

"Mr. Young and I conferred today with Messrs. Tracy and Murray, representing, respectively, the fire department, and purchasing department of the city of New York.

"They were particularly anxious to learn what the city could expect in the way of lower prices in connection with the bids to be opened on July 30, in the face of Presidential Executive Order 6767, dated June 29, 1934, whereby manufacturers may quote as much as 15 percent below their filed prices in bids to Federal, State, county, municipal and other governmental agencies.

"We advised Messrs. Tracy and Murray that, first of all, the industry had submitted a brief to Washington, asking for an exemption from the provisions of the Executive order in question. We also pointed out that the present filed price of 78 cents per foot on New York City specification fire hose and couplings is below that of 82 cents filed on underwriters hose, and directed attention to the fact that the city's specification hose is much more costly than underwriters'. We admitted that manufacturers individually and voluntarily could quote the city as much as 15 percent below the filed price of 78 cents if they see fit to do so, but we advised Messrs. Tracy and Murray that we doubted whether a manufacturer would do so in view of the brief which we presented to Washington" (p. 574, Buff file).

Commissioner Forbes stated that he had had several conversations with Mr. Clay Baird, president of Bi-Lateral Fire Hose Co., with respect to this situation, in the course of which Mr. Baird stated that the price on fire hose was fixed by agreement between the various rubber companies (p. 1079, buff file). Mr. Baird promised to use his influence to remedy this situation, but, apparently, was unable to do so.

On August 23, 1934, he wrote Mr. Forbes:

"I note that you are peeved at the action of the rubber companies manufacturing specification hose. I don't blame you for this, but from our talk over the phone I thought you were a little peeved at the writer because I had not accomplished what I endeavored to do—get you a better price on your second advertisement for hose and be of some help to you. At that time I insisted that my connections with the code people—that they give you a better price by reason of the difference between the code prices and the last price your city paid. I was politely informed that the second bid would be advanced to 84 cents, same as the code price on Underwriters hose, with the explanation that the New York hose cost more than the Underwriters hose, which other cities are buying and paying 84 cents for right along; however, I informed them that I did not believe they were treating you fairly, and to my surprise they decided to put the bid in the same as before, 78 cents" (p. 1084, buff file).

Not only did the Mechanical Divisional Code Authority take effective action to hold manufacturers in line, as appears above, but they also made every effort to see to it that jobbers bidding on New York City contracts quoted the filed prices. A recent instance is illustrative of the methods employed by the Mechanical Divisional Code Authority in maintaining the resale price of New York City specification fire hose. On January 26, 1935, the Quaker City Rubber Co. advised the Rubber Manufacturers Association that on bids opened by the city of New York on January 15, 1935, the Ace Rubber Co. quoted a price of 40 cents per foot, although the filed price was 44 cents per foot. (See p. 706, buff file.)

On January 31, 1935, the Mechanical Divisional Code Authority notified all manufacturers of underwriters fire hose of this fact, stating:

"Do you supply this company with its requirements? If so, kindly have them correct their bid and advise us. Also, advise what action you will take if the order is offered to your company" (p. 705, buff file).

The companies responding to this bulletin and advising the code authority that they would not accept this order if the Ace Rubber Co. attempted to place it with them were marked "O. K." by the Mechanical Divisional Code Authority on the list of fire-hose manufacturers appearing at page 687, buff file. The individual replies appear at pages 688 to 704, buff file.

It is significant that the 40 cents price quoted by Ace Rubber Co. was well within the 15 percent tolerance permitted by Executive Order No. 6767. It is also worthy of note that Ace Rubber Co., as a jobber, was not subject to the provisions of code no. 156 and, therefore, neither bound by the prices filed nor required to file prices itself. Nevertheless, the Mechanical Divisional Code Authority effectively established a boycott against it.

This situation resulted in a protest from Mayor LaGuardia to Gen. Hugh S. Johnson as early as August 23, 1934. The mayor stated:

"You will recall my talk with you over the telephone concerning the situation in the fire-hose industry. Under the law I can purchase only after open competitive bidding. The situation in the hose industry, even before N. R. A, would indicate that there was not open competitive bidding. We are convinced that we are not getting the benefit of the 15 percent latitude allowed in bidding for municipal or Government work" (p. 61, buff file).

On August 23, 1934, General Johnson replied:

"As you know, Executive Order 6767, of June 29, 1934, a copy of which is enclosed, provides for a tolerance of 15 percent below filed prices on bids made to governmental agencies but does not make mandatory such reduction from filed price lists.

"Therefore, while there may be a tendency toward uniformity of bids on governmental agency business, I do not, in the light of the code and the executive order, see that the situation will alter until competitive conditions in the industry so dictate" (p. 59, 60, buff file).

On February 15, 1935, Mayor LaGuardia renewed his protest, this time directed to Hon. Donald Richberg (p. 56, buff file). Mr. Richberg promised an immediate investigation (p. 58, buff file). At the date of this report, it appears that the only investigation being made is that of the Federal Trade Commission.

(b) *City of Milwaukee.*—On January 15, 1935, the city of Milwaukee, central board of purchases, advertised for bids on approximately 13,000 feet of fire hose. The bids were opened on January 31, 1935, and were as follows:

Bids received on fire hose, by the central board of purchases, Milwaukee, Wis., Jan. 31, 1935

[C. P. No. 4]

	(A) 500 feet 1½ inch fire hose	(B) 10,000 feet more or less, 2½-inch fire hose	(C) 2,500 feet more or less, 3½-inch fire hose	(D) 100 feet 4-inch fire hose
	Per foot	*Per foot*	*Per foot*	*Per foot*
Kuehn Co., N. L.	$0.5088	$0.777	$1.2488	$1.5355
American LaFrance Co.	.55	.84	1.35	1.66
American Rubber Manufacturing Co.	.55	.84	1.35	1.66
Badger Belt & Supply Co.	.55	.84	(1)	(1)
BiLateral Fire Hose Co.	.55	.84	1.35	1.66
Cunningham Ortmayer Co.	.55	.84	1.35	(1)
Eureka Fire Hose Co. (division of United States Rubber Co.)	.55	.84	1.35	1.66
Fabric Fire Hose Co.	.55	.84	1.35	1.66
Factory Equipment Co.	.55	.84	1.35	1.66
Ford Rubber Co.	.55	.84	1.35	1.70
General Rubber Co.	.55	.84	1.35	(1)
Goodall Rubber Co.	.55	.84	1.35	1.66
Hoffman Manufacturing Co.	.55	.84	1.35	1.66
Kidde Co.	.55	.84	1.35	(1)
Milwaukee Rubber Co.	.55	.84	1.35	(1)
Reichel Korfmann Co.	.55	.84	1.35	1.66
Shadbolt & Boyd Co.	.55	.84	(1)	(1)
Wilson & Co.	.55	.84	1.35	1.66
Price paid last contract, 1931	.36	.4956	.8992	1.50

[1] No bid.

It will be noted that the only deviation from a price of 84 cents per foot on 2½-inch underwriters' specification, coupled hose, was the bid of a Milwaukee jobber, N. L. Kuehn, 1022 North Fourth Street, Milwaukee, Wis. The Kuehn Co. was, however, unable to purchase hose from any of the manufacturers to make delivery on this tender. The explanation appears in the record of the mechanical divisional code authority (pp. 743 to 789; see also p. 172).

On January 23, 1935, the mechanical divisional code authority sent out over its signature the following letter (p. 770):

"On January 31, at 3 p. m., bids will be opened by the above for the following:

"*Quantity and sizes.*—One hundred feet of 4-inch D. J. fire hose, rocker lug couplings, 4-inch thread; 2,500 feet 3½-inch D. J. fire hose, rocker lug couplings, 3½-inch thread; 10,000 feet 2½-inch D. J. fire hose, rocker lug couplings; 500 feet 1½-inch D. J. fire hose, rocker lug couplings.

"We wish to call your attention to several items in the request for bids.

"*Payment.*—Exception should be taken to the terms outlined in the city's request. Only standard terms according to the code should be quoted.

"*Guarantee.*—Exception should be taken to the 3-year guarantee and only the standard guarantee, as covered by the code, should be quoted.

"*Notice to bidders on fire hose.*—Under this caption they call attention to Executive Order 6767. Kindly bear in mind that the industry has taken exception to this Executive order, and, as you know, filed a brief with Washington to be exempted therefrom. Pending such action, they have deemed it advisable to disregard this order and only quote filed prices.

"In making your bids on this proposal kindly be governed by the foregoing."

This notice to the members seems to have been inspired or suggested by a letter dated the same day and sent to Mr. Hamilton Abert of the mechanical divisional code authority by W. Gussenhoven, assistant to the vice president of United States Rubber Products, Inc. (see p. 777). The divisional code authority obtained immediate response from several of the larger manufacturers:

Manhattan Manufacturing Division, January 26, 1935: "We acknowledge your letter MG–C–1577 of January 23, 1935.

"We are offering quotation on this inquiry on the 1½-inch and the 2½-inch size only, and our quotation will be based strictly in accordance with information given in your letter to us, taking the various exceptions noted."

Acme Rubber Manufacturing Co., January 24, 1935: "In answer to your letter of the 23d instant, MG–C–1577, wish to advise that if this company bids on fire hose for the city of Milwaukee, Wis., it will comply with the conditions as set forth in your letter."

Apparently fearful that American Rubber Manufacturing Co. in Oakland, Calif., and Pioneer Rubber Mills, San Francisco, Calif., would not receive the letter of January 23 in time, the secretary wired both companies:

"Milwaukee, Wis., opening bids January 31, fire hose. We are notifying industry by letter to take exception to payment clause, guarantee clause, and not acquiesce to Executive Order 6767 mentioned in the proposal quoting filed prices."

On February 1, 1935, the secretary of the Mechanical Divisional Code Authority sent out a form letter "To Manufacturers of Underwriters' Fire Hose", the subject of which was "Official filing of prices, fire hose, Milwaukee, Wis.:

"We have received a report that all bidders quoted according to filed prices with tne exception of N. L. Kuehn, Milwaukee, who quoted as follows:

	Bid	Filed
1,000 feet of 4-inch F. J. fire hose, rocker lug couplings, 4-inch thread	1.5355	1.66
2,500 feet of 3½-inch D. J. fire hose, rocker lug couplings, 3½-inch thread	.12488	1.33
10,000 feet of 2½-inch D. J. fire hose, rocker lug couplings	.777	.84
500 feet of 1½-inch D. J. fire hose, rocker lug couplings	.5088	.55

"The Hamilton Rubber Manufacturing Co. quoted them on this material and specifically stated that they must bid according to filed prices. In contacting them concerning their bid, they stated that they were sure they could purchase the material from some company and would not change their bid.

"Kindly advise your attitude, if offered this order."

The result of this letter was response from all manufacturers of fire hose.

Goodyear Tire & Rubber Co., Inc., February 19, 1935: "Referring to your letters of January 23 and February 1, MG–C–1577 and 1609, respectively, we did not reply to these letters because of the fact that we have repeatedly ex-

plained our position with reference to bids to municipalities on fire hose, to the effect that we had a sales agency in the American LaFrance & Foamite Industries, and our agreement with that company does not allow of our quoting directly or through jobbers on municipal business. Consequently, if the order for Milwaukee was offered us by Kuehn or any other jobber, we should be unable to accept it, even though we wanted it, and certainly our agency is not going to accept it."

Continental Rubber Works, February 16, 1935: "We are in receipt of your wire dated February 13, asking that we advise our attitude in connection with Milwaukee fire hose as mentioned in circular MG–C–1609.

"We are sorry that we have failed to reply to the circular under consideration and take this opportunity to advise you that we will, of course, not accept any order for fire hose, if any offer should be made to place it with us by the N. L. Kuehn Co., Milwaukee."

Hewitt Rubber Co., February 13, 1935: "Milwaukee fire hose will protect our filed prices and will refuse to accept order unless at proper schedule."

Republic Rubber Co., February 12, 1935: "Referring to MG–C–1609 of February 1, we would be entirely agreeable to refusing to accept order from N. L. Kuehn, in case this action were agreed upon by all other manufacturers."

American Rubber Manufacturing Co., February 9, 1935: "With reference to the recent bids on the above subject, we wish to state that we do not furnish the company in question on any of its requirements, and that we will decline to accept an order from them if we are approached."

Pioneer Rubber Mills, February 4, 1935: "This answers your letter of February 1, MG–C–1609, reporting that N. L. Kuehn submitted the only bid below filed prices. Should they offer to purchase this hose from us, we shall decline to supply it unless their bid has been corrected to the proper basis."

United States Rubber Products, Inc., February 6, 1935: "In reviewing our letter of February 5, acknowledging yours as above, please disregard our first letter as we will not quote the N. L. Kuehn Co. if approached to fill the order."

Hamilton Rubber Co., February 6, 1935: "Referring to your letter of the 1st and on the above subject, we can only confirm our telephone conversation with Mr. Abert in this connection, which was outlined in your letter, to the effect that we quoted N. L. Kuehn on this hose specifically stating the filed prices to quote, with the understanding that if they deviate from these prices we would not accept this business.

"We feel the industry should watch this company very closely."

Cincinnati Manufacturing Co., February 6, 1935: "In reply to your letter of the 1st.

"Should the order for cotton rubber-lined fire hose for the city of Milwaukee by the N. L. Kuehn Co., Milwaukee, quoting prices below schedule, be tendered to us, we would decline to fill it unless the bid is withdrawn and the business placed at prices in accordance with those which have been filed.

"No overture has been made to us to accept this order."

Whitehead Bros. Rubber Co., February 6, 1935: "If we are given the opportunity of quoting on the fire hose through N. L. Kuehn, Milwaukee, Wis., referred to in your letter of February 1, MG–C–1609, we will not quote below our filed price."

Boston Woven Hose & Rubber Co., February 6, 1935: "Replying to your circular MG–C–1609, in view of the fact that N. L. Kuehn cut the price on the recent fire hose inquiry from the city of Milwaukee, we should feel that it would be up to us to refuse the order, if offered to us, on the assumption that concerted action of similar nature will be taken."

B. F. Goodrich Co., February 5, 1935: "Supplementing wire 1st, city of Milwaukee have information to effect Goodyear refusing to accept order from N. L. Kuehn. Indicating however Hamilton accepted order and will furnish hose."

B. F. Goodrich Co., February 4, 1935: "We will not serve this distributor under the circumstances. In any event, we have our distributor in Milwaukee who looks after our interest."

Thermoid Rubber Co., February 4, 1935: "In reply to your letter of February 1, circular MG–C–1609, subject official filing of prices, fire hose, Milwaukee, Wis., would advise that we did not quote and are not the source of supply of N. L. Kuehn, of Milwaukee.

"We will not accept this order from them if it is offered to us."

Quaker City Rubber Co., February 5, 1935: "In reply to your letter of February 1, references shown above, we have not as yet received an inquiry from N. L. Kuehn of Milwaukee, but if we do, you may rest assured we will quote them schedule prices only, and should they send us their order for fire hose, we will

not accept it unless they agree to withdraw their bid and put in a new one at regular schedule prices."

Acme Rubber Manufacturing Co., February 2, 1935: "In answer to your letter of the 1st instant under the above caption, we wish to advise we will not accept any order for fire hose as referred to in your letter unless accompanied by a signed declaration that the hose will be sold at scheduled prices, and this must be verified by the city purchasing agent."

Manhattan Rubber Manufacturing Division, February 2, 1935: "Due to existing arrangements, we are not in a position to accept an order from N. L. Kuehn, Milwaukee, Wis., for fire hose even though it might be offered to us."

On March 15, 1935, the board of purchases for the city of Milwaukee wired to the President of the United States (which message was relayed to the Commission) that the N. L. Kuehn Co. was unable to purchase the fire hose upon which it had bid from any manufacturer, and further, that it (the board) was in possession of information that all manufacturers of fire hose were requiring their wholesale outlets to sign affidavits that all hose being delivered to them is not intended for, and would not be diverted to, the N. L. Kuehn Co. Investigation of this allegation has confirmed it to the extent that the president of the Rubber Manufacturers' Association states that manufacturers were requiring assurance from their jobbers that their hose purchases were not intended for Kuehn.

The conclusion, of course, is that the respondent manufacturers have quoted a fixed price to the city of Milwaukee on its fire-hose requirements and have carried through a secondary boycott which, to date, has proved effective and made the primary conspiracy (price fixing) 100-percent effective.

2. EXECUTIVE ORDER NO. 6767

On June 29, 1934, President Roosevelt issued Executive Order No. 6767, which provides:

"1. Any person submitting a bid to any agency or instrumentality of the United States, or any State, municipal, or other public authority, to furnish goods or services at prices which, in accordance with the requirements of one or more approved codes of fair competition, must have been filed, prior to their flotation, with the code authority, or other designated agency, shall be held to have complied adequately with the requirements of such code of fair competition: (*a*) If said bidder shall quote a price or prices not more than 15 percent below his price or prices filed in accordance with the requirements of such code or codes; and (*b*) if after the bids are opened each bidder quoting a price or prices below his filed price or prices, shall immediately file a copy of his bid with the code authority or other appropriate agency with which he is required to file prices" (p. 7, buff file).

In the minutes of the Mechanical Divisional Code Authority dated July 19, 1934, the following is reported:

"Under date of July 3, 1934, the chairman of the code authority of Code No. 156 issued Bulletin G–C–37 to all members of the industry subject to Code No. 156, regarding the President's Executive Order No. 6767, which appeared in the press on June 30, 1934, modifying Executive Order No. 6646 with respect to bids to Federal, State, county, and municipal Governments on products embraced by codes of fair competition.

"The modifying order in question, which is not mandatory but permissive, allows bidders to quote prices as much as 15 percent lower than their filed prices and in such an event, required bidders, in each instance, to then file copies of their bids with the code authority.

"The code authority of Code No. 156, at a meeting held on July 2, 1934, appointed a special committee to prepare and submit a brief to the Administrator requesting exemption from the provisions of the Executive order in question." (P. 246, buff file.)

Bulletin G–C–37 referred to in said minutes, reads in part as follows:

"The code authority of Code No. 156, at a meeting held on July 2, 1934, appointed a special committee to prepare and submit a brief to the Administrator, requesting exemption from the provisions of the Executive order in question.

"It was the sense of the meeting that pending final decision on the request for an exemption, it would be desirable for manufacturers individually to adhere to their currently filed prices and terms in bidding on all governmental inquiries." (P. 141, buff file.)

On July 6, 1934, the American Rubber Manufacturing Co. wired Mr. Kunze, the secretary of the Mechancial Divisional Code Authority as follows:

"Advise by air mail effect of President's recent ruling on bidding below filed prices to governmental agencies. Have Government bids pending here, desire information at once." (P. 193, buff file.)

Mr. Kunze replied as follows:

"Retel brief being prepared requesting exemptions from provisions Executive order regarding bids below filed prices governmental agencies. Code authority opinion desirable manufacturers adhere currently filed prices pending decision on brief. See circular G–C–37, July 3." (P. 192, buff file.)

The code authority received assurances from several members of the industry that pending application for an exemption from Executive Order No. 6767 they would adhere to their currently filed prices (see pp. 191, 195, buff file). The letter of the Republic Rubber Co. with respect to this subject is interesting. It states:

"It is my understanding, although I may be wrong, that the code authorities represent the division. It is not my understanding that such authorities are at liberty to make their own interpretation of what the division might be thinking. Present filed prices on Government business were established by the division members, and it would seem to me that only those members can change it. In other words, if the division members as a whole desire to be exempted from the Executive order applying to Government business, the members should so vote." (See p. 185, buff file.)

In response to request of the National Recovery Administration for information as to the effect of Executive Order No. 6767, the Mechanical Divisional Code Authority reported:

"There have been only a few instances where manufacturers bidding direct have taken advantage of Executive Order No. 6767 and quoted governmental agencies below filed prices. Such instances have not to date resulted in the general lowering of prices to governmental agencies or to other classes of trade, but they have created some lack of confidence that is within the industry and forebodings as to the future.

"There have been numerous cases where jobbers and other resale outlets have quoted governmental agencies below filed prices of the manufacturers, and the existence of Executive Order No. 6767 has not helped the situation." (Page 300, buff file.)

The code authority's request for exemption from the provisions of Executive Order No. 6767 was never granted (p. 95, buff file). Nevertheless, it appears that at least until January 1, 1935, the members of the mechanical goods division did not accord to governmental agencies the 15-percent tolerance provided for in said order. Two outstanding examples of instances in which the Mechanical Divisional Code Authority boycotted jobbers who took advantage of said Executive order in submitting bids are set forth in sections V. 1. (a) and (b) of this report.

On February 25, 1935, the Manhattan rubber manufacturing division of Raybestos-Manhattan, Inc., reported to Mr. Kunze that Acme Rubber Manufacturing Co. quoted the town of Dracut, Mass., a price of 90 cents per foot on 2½-inch double jacket treated fire hose coupled. It complained:

"Inasmuch as no hose to any municipality is to be sold at prices lower than the prevailing schedule on Underwriters hose, it is our belief that no price should be quoted on 2½-inch double jacket treated fire hose coupled below $0.92 per foot." (P. 876, buff file.)

A similar complaint was received from the Republic Rubber Co. (p. 871, buff file). The Mechanical Divisional Code Authority took this matter up with the Acme Rubber Manufacturing Co., as a result of which said company corrected its price (p. 870, buff file).

Despite the fact that the Acme Rubber Manufacturing Co. apparently felt obligated to change its bid in accordance with the request of the Mechanical Divisional Code Authority, since the price quoted was not more than 15 percent below its filed price, the original bid was proper and not in violation of the code under the terms of Executive Order No. 6767.

Innumerable other instances appear in sections VII and VIII, buff file, in which manufacturers of fire hose at the instance of the Mechanical Divisional Code Authority withdrew or corrected their bids despite the fact that the bids submitted, although quoting less than the filed prices, did not give a discount in excess of the 15 percent provided for in said Executive order. Since January 1935 the Federal Government has been permitted to take a 15-percent discount from filed prices on payment of invoice. Other governmental agencies must still pay the full price (p. 1240, buff file). It is not unreasonable to conclude, therefore, that the failure of the members of this industry to take advantage of Execu-

tive Order No. 6767 in bidding upon governmental contracts was the result of an agreement between them not to do so.

3. CONTROL OVER NONMEMBERS OF THE INDUSTRY

(*a*) *Resale-price maintenance.*—The Code of Business Principles agreed upon by all manufacturers of fire hose at a meeting of the mechanical rubber goods division of the Rubber Manufacturers' Association, held June 21–23, 1933, provided:

"No. 6. To eliminate unfair competition, we hold that it is necessary for us to adopt and rigidly enforce sales prices of our products for our branch stores, as well as enforce minimum resale prices by our jobbers and/or retailers, which shall not be lower than the minimum prices out of factory branches." (P. 1294, buff file.)

While it was impossible because of time limitations to make an extensive investigation as to the resale-price-maintenance policies of the members of this industry, it appears that the Mechanical Divisional Code Authority deemed it the obligation of every manufacturer of fire hose to see to it that their jobbers did not offer prices or terms better than the uniform prices and terms filed by the manufacturers themselves.

On October 23, 1934, Mr. Abert, assistant secretary of the Mechanical Divisional Code Authority, complained to the Boston Woven Hose & Rubber Co. that Stockwell Rubber Co., a jobber, had bid less than the filed price on fire hose on the bids opened October 17, 1934, by the Commonwealth of Pennsylvania (p. 930, buff file). On October 24, the Boston Woven Hose & Rubber Co. advised Mr. Abert that the matter had been taken up with Stockwell Rubber Co. and—

"We received word from him this morning about it, together with a copy of a letter dated October 23, which he has written to the Commonwealth of Pennsylvania, purchasing department, explaining the error and withdrawing the bid." (P. 926, buff file.)

On February 21, 1935, the Mechanical Divisional Code Authority advised the Manhattan rubber manufacturing division that the Mid-West Co. had bid less than filed prices on their product to North St. Paul, Minn. (p. 961, buff file). The Raybestos-Manhattan, Inc., advised Mr. Abert that they would immediately investigate this bid (p. 996, buff file).

On January 7, 1935, Mr. Kunze telegraphed Republic Rubber Co., Quaker City Rubber Co., and B. F. Goodrich Co. that Holmes Hardware Co. had quoted less than filed prices to the city of Pueblo, Colo. (p. 984, buff file). It appears that said company was a jobber for Goodrich, which advised Mr. Kunze:

"Telegram seventh fire hose Pueblo our Denver branch advised Holmes has promised correct quotation." (P. 980, buff file.)

Additional examples of action by the Mechanical Divisional Code Authority in cooperating with manufacturers of fire hose in the enforcement of resale prices are to be found in sections VII and VIII, buff file.

(*b*) *Boycott.*—The investigation made herein establishes that wherever a jobber refused to correct its bid so as to conform to the filed prices of the manufacturers, steps were taken by the Mechanical Divisional Code Authority to prevent said jobber from obtaining the merchandise necessary to fulfill his contract. The most outstanding examples of this practice are set forth in section V, 1 (*a*) and (*b*), above. The records of the Mechanical Divisional Code Authority disclosed, however, that the incidents referred to; namely, Ace Rubber Co.'s bid to the city of New York and N. L. Kuehn's bid to the city of Milwaukee, were not exceptional cases but were a part of a general plan carried out by the Mechanical Divisional Code Authority.

Thus it is found that when the Boston Belting & Rubber Corporation, a jobber, bid below filed prices on February 13, 1935, on the contract of the Panama Canal purchasing department, the mechanical divisional code authority advised the members of the fire-hose group:

"In view of the fact that Boston Belting & Rubber Corporation have quoted prices below manufacturers' filed prices, and also that orders covering the above would be easy to recognize as they are made to specifications, will you kindly advise your attitude if offered these orders, inasmuch as Boston Belting & Rubber Corporation would not correct or withdraw their prices." (Pp. 1024, 1025, buff file.)

The names of the manufacturers responding to this inquiry and stating that they would not accept the order of the Boston Belting & Rubber Corporation, if tendered, are indicated by the mark "O. K." appearing after their names on the list of manufacturers at page 1007, buff file. The individual replies appear at pages 1008 to 1027, buff file. The Mechanical Divisional Code Authority took

similar action with respect to the bid of W. F. Matthias to the Department of Sanitation of the city of New York (p. 1059, buff file).

On December 29, 1934, the following bulletin was sent to members of the "Underwriters' fire-hose group:

"On December 20 the above-opened bids for a quantity of fire hose to Federal specification ZZ–H–451, coupled with pin-lug couplings. There were 16 bidders, 15 of whom quoted prices according to those filed, namely, $0.6794.

"The Safety Fire Extinguisher Co. bid 60 cents and we understand were awarded the order.

"If you supply this company with its requirements will you kindly request that they correct or withdraw.

"In order to protect your filed prices, kindly advise your attitude." (P. 158, buff file.)

The boycotts thus established complete the chain of activities by which uniform prices and terms on fire hose are rigidly enforced.

VI. Additional Facts, Arguments and Findings

This investigation deals with an industry the yearly aggregate sales of which are shown to be in the neighborhood of $1,125,000,000. The Mechanical Goods Division, with which the inquiry has been particularly concerned, sold, in 1934, approximately $68,000,000 worth of its products. We have shown in the report that the Rubber Manufacturers Association is the real party in interest and that, during the calendar year 1934, it collected in dues from the association upward of $500,000 and that it expended in the operation of the code authority and the several divisional code authorities, $401,000.

The price of rubber and articles made from rubber are a matter of concern to probably every man, woman, and child in the United States. It is difficult to think of any product (outside of food products) which is more universally used. From the rubber pants and nipples of babyhood to the rubber tires of the hearse that carries us to our last resting place, there is no period of life when rubber is not a matter of daily use by every citizen. There is in this case, therefore, an unusual amount of public interest.

The president of the Rubber Manufacturers Association states that the hours of labor and rates of pay generally throughout the industry are now satisfactory; that the industry has experienced few labor troubles and for this credit is due to the industry and perhaps to the association. It is a fact that during the last 2 years the price of crude rubber has advanced and so also has the price of cotton, which commodity enters into the manufacture of many rubber products including fire hose, the immediate subject of this investigation. Mr. Viles of the Rubber Manufacturers Association has stated that prior to the adoption and operation of the code the industry was in very poor circumstances, particularly with respect to low prices, low wages, and unfair competition. He included, however, in the last consideration the effect of the selling policies of large chain organizations, mail-order houses, etc. However all these things may be, this investigation is necessarily confined to a determination of what the industry has undertaken and done by way of self-regulation, either independently or through the Rubber Manufacturers Association, the code authority, and the collective action of the individual companies comprising the industry.

The industry's initial approach to the question of self-government is illustrated by the following record of a meeting held May 31, 1933, at which were representatives of all manufacturing members of the mechanical-rubber goods division of the Rubber Manufacturers Association. The remarks now recorded were made by Mr. C. D. Garretson, a present member of the Mechanical Divisional Code Authority.

"In order to get a clear picture of what this meeting is all about, let me emphasize first, that this is not a meeting of the accounting division of the Rubber Manufacturers Association, but a meeting of the accountants of the members of the mechanical division of the Rubber Association, and each one of you is here representing your company. The purpose of the meeting is to develop certain facts of the industry, agree on certain fundamentals, get the capacity of the industry and cost so that sales executives of your companies may finally agree on uniform selling prices, and, possibly, an apportionment of business which will finally be embodied in a code to be approved by the Government. This is all predicated on the passage of the so-called "Wagner bill" by Congress. * * *

"Under the bill as it will be passed, it will be necessary to be fair to each individual company, but it is evident that the method of eliminating cutthroat competition must be the fixing of prices" (p. 1325, buff file).

Thereafter, and on June 21-23, 1933, at a meeting of the mechanical goods division of the Rubber Manufacturers' Association, at which were present responsible representatives from each of the mechanical rubber goods manufacturers, further action was taken, looking toward self-government.

"Despite the fact the foregoing 'declaration of business principles' must be approved by the Industrial Recovery Administration before it becomes binding on all units of the industry, it was the consensus of opinion that all mechanical rubber goods manufacturers represented at this meeting should consider the code to be immediately operative and conduct their future operations in accordance with this provision" (p. 1291, buff file).

The code of business principles to which the resolution had reference is in the file at page 1293 et seq. In this connection it is interesting to note that the American Rubber Manufacturing Co., Oakland, Calif., was not represented at the meeting, but this company, on July 31, 1933, filed with the association a signed copy of the Code of Business Principles. That the result of the adoption of the Code of Business Principles was followed immediately by an agreement with respect to prices, is circumstantially established by the entire investigation and particularly corroborated by a telegram sent on June 29, 1933, by J. A. Lambert, of the Acme Rubber Manufacturing Co.:

"R. H. GOEBEL,
Secretary Rubber Manufacturers Association:

"Important that all members mechanical group attending Trenton meeting last week be immediately notified new price schedule becomes effective July 1 as board directors have tentatively approved code."

The record shows that effective July 1, 1933, the prices on fire hose generally were raised from 47 cents (on 2½-inch underwriters specification hose) to 70 cents to 74 cents per foot. There is plethora of evidence, considerable of it direct, establishing that the new and fixed price was substantially observed, during the remainder of 1933 and until Code No. 156 for the Rubber Manufacturing Industry was approved and placed in effective operation. This code, as stated hereinbefore, was approved by the President on December 15, 1934, and became effective on December 26 of the same year.

The record shows that after the Rubber Manufacturers Association had set up and placed in operation the code authority and the several divisional code authorities, as provided for in Code No. 156, the things hoped for and to some extent accomplished in the June 21, 1933, meeting, became entirely effective in bringing about uniform prices for all types of mechanical rubber products, including fire hose. Perhaps it is not too much to state that Code No. 156 in the main, codified the Code of Business Principles referred to above and secured official sanction for the rules and their enforcement. True it is that the code did not on its face sanction price fixing or agreements with respect to prices, but it set up multiple rules, the enforcement of which has, as shown by this investigation, resulted in the fixing of uniform prices and the elimination of all price competition as between the several members of the mechanical rubber goods division.

Let us say at once that in our opinion, with one exception, Code No. 156 contains nothing which, standing alone, or on its face, is illegal from the standpoint of the trust laws. The exception which we have in mind is that provisions which provides that when a member has filed a price schedule or list of prices for its product, it agrees to adhere to such prices in making all sales until it has given 10 days' notice to the code authority, and through it to the trade, that such price is no longer its filed price. While we are aware that the reason usually ascribed for this provision is the elimination of sceret or confidential rebates or discounts, nevertheless, we, as attorneys, hold the opinion that such an undertaking either within or without the code, constitutes an agreement in restraint of trade prohibited by the Sherman law and is a monopolistic practice as prohibited by the National Recovery Act. (This opinion is not shared in its entirety by Attorney Seidman, but he is agreed that in its operation under this code it has become an effective instrument for the enforcement of a price-fixing agreement and as such constitutes a monopolistic practice prohibited by the National Industrial Recovery Act and Code No. 156 itself.)

The record clearly establishes that under the "sanctuary" of Code No. 156, the rubber industry and particularly the mechanical rubber-goods division of the Rubber Manufacturers Association was permitted to do several things which have heretofore been unreservedly condemned by the Supreme Court. We refer to—

1. Filed price, accompanied by an agreement that such filed price will be the selling price of the filer until 10 days' notice to the trade.

2. The determination and application of uniform (maximum) terms of sale.

3. The classification of customers according to rigid definition and the adoption of such classification by all selling members of the group.

4. An agency created and to make effective 1, 2, and 3 supra.

We are principally concerned with what has been brought about in the industry by application of the provisions of the code as the same have been applied by the code authority and the Mechanical Divisional Code Authority. Enough has been set up in the body of this report to establish beyond any doubt that the Mechanical Divisional Code Authority and its paid officers have widely exceeded their respective provinces and have erected under Code No. 156 a first-class combination and conspiracy in restraint of trade. Under cover of the code, the Mechanical Divisional Code Authority has, with the cooperation of the members of the division, fixed prices on the several products which the members manufacture, including fire hose. It has done this by using the machinery of the code authority to enforce filed prices, which filed prices were uniform and by this investigation, shown to be uniform by reason of agreement between the several manufacturers of fire hose.

If there is doubt in the mind of anyone reviewing this report with respect to the accuracy of this conclusion, let him answer the question as to how 19 manufacturers filing their prices simultaneously could possibly hit upon 100 percent uniformity with respect to a multiple number of items and like discounts to be allowed to 12 customer classifications.

Let any doubter bear in mind that while Code 156 provides machinery for the determination of members' costs to the end that no member of the industry shall indulge in below-cost selling tactics, such machinery has not been once set in motion to determine any member's cost nor has any charge been made that any seller has approached a price concerning which question was raised. From this fact it is quite obvious that the prices now being secured by the industry are not those dictated by rock bottom, yet, fair competition, but are prices sustained by an agreement. It is significant that the 70 cent price of April 10, 1934, was raised to 74 cents on July 1, 1934, has remained there until the present time, and we are informed that manufacturers have announced a further raise to become effective on April 1, 1935. The heredity of all price-fixing arrangements is thus disclosed.

The record establishes that the conspiracy has militated particularly against municipal governments, although, of course, the Federal Government has, because of the conspiracy, been required to forego the advantage which the President intended to give to it by his Executive Order 6767 June 29, 1934. Cities, towns, and villages must purchase fire hose for the protection of life and property. It is significant that many towns, villages, and cities have deterred the purchase of this commodity for the last year to the present time, in the vain hope that some type of competition might come to the industry which would result in a lowering of prices. We have little doubt but that large industrial buyers of fire hose have been accorded special prices and concession, in addition to the lower prices accorded to them by the customer classification set-up of the code. We can see no justification for a discount of 10–10 percent to equipment manufacturers, jobbers, and distributors and net prices to State, county, and municipal governments, many of which purchase in very large quantities, as, for example, the city of New York, which on its last invitation, asked for quotations on some 182,500 feet of hose. Obviously, a successful bid can be placed before the purchasing officer of the city of New York at a total selling cost of 3 cents for the stamp for the letter transmitting the bid.

We find that—

1. The Rubber Manufacturers Association is the real party in interest in this case for it collects all sustaining funds used by the code authority and the several divisional code authorities and in turn supports these agencies by meeting their expenses. It follows, therefore, that the association by reason of fiscal control over the code authorities, is in theory and practice, in position to entirely dictate and control the activities of the code authorities. There is the further showing that the president of the association is chairman of the code authority and this by provision of code 156.

2. We find the mechanical divisional code authority with the theoretical and actual approval of the code authority and the association has much exceeded its authority by—

(a) Investigating, checking, exhorting, advising, and requiring the several members of the industry under its jurisdiction to adhere to certain prices on mechanical rubber goods and particularly fire hose, which prices it knew and must have known were fixed by agreement;

(b) Interpreting, construing and enforcing rules with respect to uniform (maximum) terms of sale to the end that no discount or price advantage accrue to any customers of the members.

(c) Arbitrarily and without authority classifying customers without giving such customers a chance to be heard, and enforcing such classification on the industry in the face of direction of the administrator to the contrary.

(d) Advising, encouraging and assisting the members of the division not to grant to the Federal Government, State governments and municipalities any benefits intended by Executive Order 6767.

(e) Encouraging, assisting, and cooperating with members of the industry in the maintenance of resale prices.

(f) Actively assisting and cooperating with the members in the conduct of boycotts directed against those who desired to make price concessions and who were not "members of the industry within the code definition."

(g) Encouraging, assisting and cooperating with the members of the industry in the conduct of a secondary boycott with particular reference to the city of Milwaukee and N. L. Kuehn Co., a jobber of such city.

3. We find, of course, that the members of the mechanical rubber goods division of the Rubber Manufacturers Association entered into a conspiracy to fix prices in June 1933, and continued such conspiracy until the approval of code 156 in December 1934, and that such conspiracy, supplemented and assisted by the code authority, has continued and continues at the present date.

4. We find that the 19 members of the fire hose group severally sell the fire hose which they manufacture (or for which they act as exclusive agents) throughout the United States. They are without question engaged in interstate commerce and for such reason subject to the jurisdiction of the Commission.

The Rubber Manufacturers Association is not engaged in commerce, but its members are, and it, together with the code authority and the Mechanical Divisional Code Authority, are by this investigation shown to be actively cooperating with the fire hose manufacturers in the carrying out of an agreement in restraint of trade. Stated in another way, the Rubber Association and the Mechanical Divisional Code Authority are the agencies selected, authorized, and paid by the conspiring members to assist in, execute, and administer the conspiracy.

VII. Conclusions

The foregoing facts and findings warrant the sure conclusion that the several designated respondents have perfected and are now carrying out a major type conspiracy in restraint of trade, which, if found existing prior to the passage of the National Industrial Recovery Act, would demand instant proceedings under the Sherman law and/or the Federal Trade Commission Act; *U. S.* v. *Eastern States Lumber Association*, 234 U. S. 600; *U. S.* v. *Trans-Missouri Freight Association*, 17 Supreme Court, 501; *U. S.* v. *American Column & Lumber Co.*, 263 Fed. 147; *U. S.* v. *American Linseed Oil Co.*, 257 U. S. 393; *Trenton Potteries Co.* v. *U. S.*, 273 U. S. 392; *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52; *Ark. Whol. Grocers Association* v. *F. T. C.*, 18 Fed. (2d) 866.

The question then is on whether or not the respondents, by reason of the fact that they are operating under the provisions of an approved code, enjoy any sanctuary from prosecution by the Federal Trade Commission and/or the United States of America. We think the answer to this question must be sought in several directions.

First: There can be no doubt but that the National Recovery Act of June 16, 1933, intended to and in point of fact did, to some extent, grant to industry some measure of immunity from the operation of the trust laws. It is to be remembered that in the debates in Congress before this act was passed, proponents of the bill were directly asked by Senator William E. Borah and others, whether or not the act was intended to and would suspend the operation of the trust laws. Amendment to the act was tendered to the effect that nothing to be authorized by the act would suspend or impair the operation of the trust laws. The proponents of the bill resisted the amendment and a compromise was reached which resulted in placing in the language of the act the provision—

"*Provided*, That such code or codes shall not permit monopolies or monopolistic practices."

Because of this provision and the earnest desire of the National Recovery Administration to see to it that codes as adopted were indeed codes of fair competition, it was a condition precedent to the approval of any code that all classes and gradations of the industry to which the code was to apply were accorded

free opportunity to be heard in open meetings. Then and only then were codes approved and each code was approved by the administrator with the affirmative finding:

"The code is recommended as not designed to promote monopolies or to eliminate or oppress small enterprise and will not operate to discriminate against them * * *"

Furthermore, each code in its approved text contains the provision:

"No provision of this code shall be so applied as to permit monopolies or monopolistic practices."

It is thus apparent that the National Recovery Act and the codes erected by authority thereof (at least the one here under study) specifically prohibited monopolistic practices, as such results might flow from their operation. Since this investigation establishes that the members of the mechanical rubber goods industry have, under color of authority allegedly granted by the code no. 156, are fixing and maintaining uniform prices on mechanical rubber goods and since in our opinion price fixing is a monopolistic practice, we come to the conclusion on this consideration that no sanctuary or immunity is available to the industry by reason of any grant under the National Recovery Act or the code as approved by the President.

Second: Apparently fearful that approved codes might, in practical operation, result in untoward restraints of trade or might discriminate against, eliminate or oppress small business enterprise, the President, on January 20, 1934, issued Executive Order 6569:

"1. Whenever any complanant shall be dissatisfied with the disposition by any Federal agency, except the Department of Justice, of any complaint charging that any person, partnership, corporation, or other association, or form of enterprise, is engaged in any monopolistic practice, or practice permitting or promoting a monopoly, or tending to eliminate, oppress, or discriminate against small enterprises, which is allegedly in violation of the provisions of any code of fair competition approved under the National Recovery Act, or allegedly sanctioned by the provisions of such code but allegedly in violation of section 3 (*a*) of said National Industrial Recovery Act, such complaint shall be transferred to the Federal Trade Commission by such agency upon request of the complainant.

"2. The Federal Trade Commission may, in accordance with the provisions of the National Industrial Recovery Act and the provisions of an act to create a Federal Trade Commission, approved September 26, 1914, upon the receipt of any such complaint transmitted to it, institute a proceeding against such persons, partnerships, corporations, or other associations or form of enterprise as it may have reason to believe are engaged in the practices aforesaid, whenever it shall appear to the Federal Trade Commission that a proceeding by it in respect thereof would be to the interest of the public: *Provided*, That if in any case the Federal Trade Commission shall determine that any such practice is not contrary to the provisions of section 5 of the Federal Trade Commission Act or sections 2, 3, or 7 of the act of October 15, 1914, commonly called the Clayton Act, it shall instead of instituting such proceeding, transfer the complaint, with the evidence and other information pertaining to the matter, to the Department of Justice.

"3. The power herein conferred upon the Federal Trade Commission shall not be construed as being in derogation of any of the powers of said Commission under existing law."

A study of the foregoing order discloses a clear intent on the part of the President to authorize and direct the Federal Trade Commission (in its discretion and when it shall appear to the Commission to be in the interest of the public) to proceed against persons, partnerships, corporations or other associations or forms of enterprise, when such interests are believed to be engaged in practices which tend to eliminate, oppress of discriminate against small enterprise. It seems clear to us that this action by the Federal Trade Commission is not intended to take into account any supposed approval or sanction of a Code of Fair Competition as approved by the N. R. A. and the President. Indeed, it is clear that these are the very wrongs which the order was intended to correct. Furthermore, the order specifically directs the Commission's actions to those "engaged in any monopolistic practice, or practice permitting or promoting a monopoly." Also, we think that price-fixing as such is oppressive to small business and enterprise, but if proof of oppression in small enterprise is desired, the record in this case is replete with it, as witness the coercion of jobbers, the elimination of discounts, and the high-handed treatment of all who oppose the purposes and objectives of the conspiracy.

Third: The Executive order above quoted, provides:

"That if in any case the Federal Trade Commission shall determine that any such practice is not contrary to the provisions of section 5 of the Federal Trade

Commission Act, * * * it shall instead of instituting such proceeding, transfer the complaint with the evidence and other information pertaining to the matter, to the Department of Justice."

We are aware that in the *Pacific States Paper case* and the *Arkansas Wholesale Grocers case* (supra) that agreements and conspiracies in restraint of trade have been held by the courts to be violations of section 5 of the Federal Trade Commission Act. The Commission has issued numerous orders on such assumption and is prosecuting complaints under this theory at the present time. Generally speaking, we endorse the proposition that a violation of the Sherman law is ipso facto a violation of the Federal Trade Commission Act. It is our best judgment, however, that there is presented here facts which establish a perfect case under the so-called Sherman law.

Fourth: Code no. 156, chapter I, article 12, provides:

"SECTION 1. This code and all the provisions thereof, are expressly made subject to the right of the President, in accordance with the provisions of subsection (b) of article 10 of the act, from time to time, to cancel or modify, any order, approval, license, rule or regulation issued under said act, and specifically, but without limitation, to the right of the President to cancel or modify this approval of this code or any conditions imposed by him upon his approval thereof."

Because of this provision it is obvious that the President can summarily suspend the operation of this code, or any part thereof. We believe that considerable could be accomplished by the deletion from the code, and its operation, of the authorization for price filing, uniform (maximum) terms of sale and customer classification. We think that if these instrumentalities were taken away from these respondents, it might well be that price competition would return to the industry and at the same time many of the benefits which have resulted from the adoption and use of the code can be preserved to the industry and to the public.

We find ourselves unable to hold much of a brief for the respondents. There can be no doubt but that the members comprising the code authority, the directors of the association, and the agents of the divisional code authority have worked with great zeal and industry to place in operation Code No. 156. It must not be forgotten that they were in a sense required to formulate and adopt a code and that they were obligated to carry out the provisions of the code. They must have known (or they could have found out by using competent counsel available to them) that some of the things which they were doing were ultra vires of any charter from the National Recovery Administration. We, of course, refer to the uniform fixed prices, resale price maintenance and boycott. It probably is true that it was necessary to indulge in these practices in order to raise prices in the industry and to maintain them at the higher levels. Such fact, however, wrings no tears from us for the public interest and the law requires that the industrial elements banded together in the Mechanical Rubber Goods Division, should and must compete. If the weaker or less efficient fall out of the race, neither the industry nor the public will suffer. We are only concerned with seeing to it that the rules under which such elimination may result, are fair to all concerned. Such was and is the purpose of the National Industrial Recovery Act, when it handed to this industry Code No. 156, designated a "Code of fair competition." That the industry has traduced its obligations and prerogatives under the authority is no fault of the Government.

VIII. RECOMMENDATIONS

In this section immediately foregoing, we have done our best to set out the several alternatives available to a determination of this case. Probably in last analysis what is to be done is a matter for decision by your Commission. We, as your attorneys, understand our duties to be an endorsing up of a recommendation as to whether or not the facts adduced by the investigation constitute a violation of the Federal Trade Commission Act.

We find that they do, and we recommend the issuance of a formal complaint against the Rubber Manufacturers Association, Inc., the code authority of the industry, the Mechanical Divisional Code Authority, J. H. Connors, H. N. Young, C. D. Garretson, the agents of the Mechanical Divisional Code Authority, A. D. Kunze and Hamilton Abert, and the members of the mechanical rubber goods division, and particularly the respondents designated at page 2 et seq., this report.

Respectfully submitted.

HARRY A. BABCOCK, *Attorney.*
ALBERT G. SEIDMAN, *Attorney-Examiner.*

MARCH 17, 1935.

BRIEF OF FACTS

This report is transmitted unaccompanied by the usually required brief of facts for the reason that the examining attorneys have had no time to prepare the same. The accompanying documentary material, however, is conveniently arranged for the quick assembling of all necessary data.

Senator CLARK. I would like to have the opportunity of examining them. I am informed, Mr. Chairman, that the Chief Examiner of the Federal Trade Commission has been in Washington and will be available as a witness if it is desired, and I would suggest that we call him Monday—the man that made this investigation.

I am told—I have not had a chance to examine the file—but I am informed that the field discloses this fact, that before the complaint was ever filed with the Federal Trade Commission, the same matter was called to the attention of high officials of the N. R. A. who did nothing about it.

Senator BLACK. I wonder if there would be any objection, instead of filing them here, to send them to the Attorney General?

Senator CLARK. I understand that Mr. Babcock is familiar with the facts——

The CHAIRMAN (interrupting). Suppose we leave these with the clerk for the present and hear Mr. Babcock's statement. It would seem that the Federal Trade Commission, as disclosed in this report, is doing everything possible to expedite it. They naturally would send it over to the Department of Justice under the law.

Senator CLARK. The matter was only brought to the attention of the Federal Trade Commission about a month ago. Since that time the Federal Trade Commission has conducted a very thorough and exhaustive investigation and is proceeding as expeditiously as it is possible for them to do.

The CHAIRMAN. The witness this morning is Mr. Robert W. Irwin.

TESTIMONY OF ROBERT W. IRWIN, NATIONAL COMMITTEE FOR THE ELIMINATION OF PRICE-FIXING AND PRODUCTION CONTROL

(The witness was duly sworn by the chairman.)

The CHAIRMAN. I understood that you wanted to present a matter briefly to the committee. You are representing the National Committee for the Elimination of Price Fixing and Production Control, chairman of the Furniture Code Authority, and member of the Durable Goods Committee; is that right?

Mr. IRWIN. Yes, sir.

The CHAIRMAN. What is your address?

Mr. IRWIN. Grand Rapids, Mich. For 46 years, I have been engaged in the furniture manufacturing business in Grand Rapids. We manufacture household furniture and several other types of furniture in the several institution in which I am interested.

I am appearing today on behalf of the new organization, the National Committee for the Elimination of Price Fixing and Production Control, and also on my own behalf. I am not appearing on behalf of the Furniture Code Authority. That organization has not anything, I believe, to bring before the committee at this time.

I am personally vitally interested in this legislation. Every dollar that I have in the world is invested in bricks, mortar, and furniture

in the businesses referred to. These businesses, I think I may say, have been well managed and went into this depression, each and every one of them with a substantial cash reserve in Government bonds. Today, one of the businesses we have had to suspend, the cash reserve has disappeared from most of the others, and if there is continuation of business conditions such as we have had, in the last few years, I can see what the end may be. Therefore, I am personally vitally interested in this.

N. R. A., as I think we all understand, consists of four policies or practices in connection with business and employee relationship, the short work week, the minimum wage, and the code of fair competition. I might add fifth, the child labor.

I will devote my time to discussing the question of the plan of regulating competition under this act, although I will be very glad to answer questions upon any other sections of the aht insofar as it is within my power to do so.

I do want to say, however, that I am heartily in accord with the minimum wage section of this act. I think labor needs a protection of that character in times of depression. Labor has no resisting power in the sale of its product. An empty stomach means that a $10 commodity may have to be sold for 50 cents. As I said, before, I am heartily in accord with this section of the act.

I quite agree with what Mr. Green said yesterday as to the necessity of a single minimum wage for various industries, possibly different ones for different industries, and that wages above that amount shall be determined either by collective or individual bargaining. I do not believe, however, there is much else in his statement in which I do agree.

There have been many statements made that a discontinuance of the N. R. A. at this time will bring about chaos in this country. I think it would bring about chaos in the demoralization of existing business conditions if the minimum wage section of the law were wiped out or not maintained or reenacted. I think, however, any phases of chaos which might develop are due almost entirely to that section of the law.

It has been pretty well understood for many years that some sections of business in this country, and expecially big business, have been restive under the restraints of the Sherman antitrust law. When I say "big business", I do not intend that that classification shall be all-inclusive, because there are some industries in this country, notably the automobile industry, which I figure is one of the largest, were on record as standing for free and open competition and which would mean the reinstatement of the Sherman laws. But this section of business which has been working for years to have the Sherman law modified finally did get it anesthetized 2 years ago, and as I see it, they are going everything in their power to bring forward another tank of ether to keep it in that condition for another 2 years.

I would like to present to the committee at this time some evidence in this connection and as an illustration of what is being done under the price fixing or the controlling of production, the powers which are given to some industries. I have before me a series of letters, the original of which was addressed to the Beach Manufacturing Co. of Charlotte, Mich. This concern manufactures road culverts and other products of that character.

Senator KING. Cement as well as iron and steel?

Mr. IRWIN. I think I have their letterhead here, Senator.

Senator KING. Well, it is not important.

Mr. IRWIN. I will find it a little bit later.

This was what might be termed a circular letter, written under date of June 15, 1933, by the Jensen Bridge & Supply Co. and signed A. P. Jensen as president. It was addressed to the Culvert Manufacturers of Michigan (reading:)

Enclosed please find copy of a letter which we have just received from the Republic Steel Corporation, our source of supply on sheets, together with copy of our reply, which you will find self-explanatory.

We really feel that this is an opportunity for us to get our house in order, and are sure that you will all agree that we have been very weak in our sales policies, and we are probably all equally guilty in doing our share in bringing prices down to their present level.

Please understand that we are simply sending this dope on to you to let you know that our organization is anxious to do everything possible to bring about a better understanding among ourselves, and consequently, an improvement in the selling price of Culvert pipe.

Any time you people would like to call a meeting, please get in touch with us at Sandusky, Mich., and you can rest assured that both Mr. Frame and the writer will do everything we can to help the good cause along.

We will be very glad to receive an expression from you.

Very truly yours,

JENSEN BRIDGE & SUPPLY CO.,
A. P. JENSEN, *President.*

The CHAIRMAN. That is of what date?

Mr. IRWIN. That is under date of June 15, 1933.

The CHAIRMAN. About the time the act was passed?

Mr. IRWIN. I think that may be the day before the act was passed. They knew it was coming and they started to get busy.

Senator KING. Generally speaking, from your observation and your information with some of these larger industries, did they, in anticipation of the N. R. A. and the codes which were contemplated under it, and immediately following it, proceed to get under the umbrella as soon as possible and take the lead?

Mr. IRWIN. They did.

Senator KING. And come to the N. R. A. forthwith and get the codes?

Mr. IRWIN. Yes, sir.

Senator KING. Was that done oftentimes without any consultation with the great mass of producers or manufacturers in the industry?

Mr. IRWIN. I could not say as to that, Senator. I only know in reference to the consultation with the manufacturers, what the process was in connection with the formation of the furniture code.

Senator KING. If that would not be out of place in connection with the continuity of your observations, would you care to describe that now or later?

Mr. IRWIN. I would be very glad to describe it now.

Senator KING. If you will, please.

Mr. IRWIN. The first procedure in the formation of the furniture code was to call a meeting of the existing trade organizations in that industry. We have two principal organizations, one in the North and one in the South; the National Association of Manufacturers, which takes the territory north of what you might call the Mason and Dixon Line, and the Southern Manufacturers Association, which confines its operations to southern territory.

Then there were associations in connection with the office desk business and the office chair business, and they finally joined in the formation of this one code.

These various organizations and industries within the sections which I have outlined were called together, and the committee from the various sections and industries were appointed. We then started on the work of the formation of the code. We started immediately after the passage of the National Industrial Recovery Act, and I think it was not until December of that year that the code was finally approved.

I think we have one of the best codes. I say one of the best because it has about the fewest provisions outside of the mandatory provisions of the act of any of the codes.

The CHAIRMAN. Is there a control of production provision in that code?

Mr. IRWIN. Only to the extent of a provision prohibiting the operation of more than one shift, a provision which I think is unsound.

The CHAIRMAN. Have you a price-fixing provision?

Mr. IRWIN. We have not. We have a provision prohibiting sales below cost, but with a permissive proviso, unless it be to meet the price of a lower cost producer.

The CHAIRMAN. Has the code administration of that code, and the representatives been selected with fairness?

Mr. IRWIN. I would think so.

The CHAIRMAN. There is no friction between the southern end and the northern end with reference to administration?

Mr. IRWIN. None at all. It was arranged at the start—I think the membership of the code authority was 24—and it was arranged that it would be 8 from the South and 12 from the North.

The CHAIRMAN. You would say that that code has been very satisfactorily administered?

Mr. IRWIN. Insofar as it is possible under the conditions to administer a law of that character. There has been no friction between the members of the code authority—there never has been a division that I know of in a vote taken within the code authority that was based on a North and South division.

Senator COUZENS. Are you a member of the code authority?

Mr. IRWIN. I am, Senator. I am the chairman.

Senator COUZENS. Have you ever had any investigation made or do you know of any investigation ever having been made as to the cost of production?

Mr. IRWIN. You mean by our code authority?

Senator COUZENS. Yes. I asked that because you said a while ago there was a prohibition or inhibition against selling below cost.

Mr. IRWIN. Yes; unless it is to meet a lower cost producer. There has been very little done, Senator, in connection with that endeavor to enforce that provision of the code. In its present form, it is just next to unenforceable.

Senator COUZENS. But there has been no investigation to determine the cost of production has there?

Mr. IRWIN. No general investigation. There may have been a few instances where complaints have been made and investigations have been made.

Senator COUZENS. Is there any objection on the part of the code members to investigating costs at each other's plants?

Mr. IRWIN. I don't know that I could answer that.

Senator COUZENS. Is there any inhibition in the code about starting new plants?

Mr. IRWIN. No, sir.

Senator KING. Have any new plants been started?

Mr. IRWIN. I have not heard of any, Senator. I have heard of quite a few that have closed up, but I have not heard of any new ones that have started, although they may have.

Senator KING. Closed under the code?

Mr. IRWIN. No, not closed under the code, but closed because of lack of ability to keep going under business conditions.

Senator KING. What I meant was, closed since the N. R. A. enactment.

Mt. IRWIN. There is no question, but that there have been failures in the furniture business going on constantly and continuously.

Senator KING. Are they going on now?

Mr. IRWIN. I could not without referring to reports just say when the last one was. I know what the condition in business is today.

The CHAIRMAN. Would you say that the industry is in a healthier economic condition now since the code than it was before?

Mr. IRWIN. I do not. I fail to see wherein it has in any way helped the industry.

The CHAIRMAN. Naturally, the furniture business is one I presume that you sell more of in the flush times of prosperity rather than in times of depression.

Mr. IRWIN. Like all products, Senator.

The CHAIRMAN. It is peculiarly so with reference to furniture, is it not?

Mr. IRWIN. I do not believe the figures of the past and present depressions will show that the reduction in the sale of furniture had been out of proportion to the reduction in other lines. Every depression hits more largely the higher priced merchandise.

Take this depression; it for a period practically wiped out the sale of higher-priced goods. One section of our business, for instance, one plant, makes exclusively as high a grade of goods as I think is made not only in this country, but in the world, and as a necessary fact because of that fact, the prices are what is termed "high-priced furniture."

Senator COUZENS. Would you say that the code has hurt the furniture industry?

Mr. IRWIN. No; I do not know that it has hurt it any. But the business in that line of furniture was almost wiped out. I do not think that our business for the first 2 or 3 years of the depression, say after 1930 on that class of furniture, was 10 percent of what it had been before. It is a little better than that now but not an awful lot.

The CHAIRMAN. I should imagine that that would be true with high-priced furniture. I did not know but what it would be true also in the lower grades.

Senator KING. Take your business in 1925, 1926, 1927, 1928, and 1929 and compare it with your business under the code. What would your figures show in employment, in output, and so forth?

Mr. IRWIN. I did not bring those figures, but the furniture business generally, I would say, was today probably not 40 percent of what it was in 1927 and 1928 and along in that period.

Senator KING. Does that mean in production as well as in employees?

Mr. IRWIN. They all go together.

The CHAIRMAN. The figures which were given by Mr. Richberg for the furniture industry, March 1933, there were 83,000 plus employed. In December 1934 there were 110,000 plus. The pay rolls in March 1933 were $897,000, and in December 1934 it was $1,859,000.

Mr. IRWIN. I have those figures here. The question, though, asked me, was in its relation to 1927 and 1928, I think, by Senator King. I want to call your attention, however, I have those figures before me of Mr. Richberg which you referred to. That you may properly appraise them, I might say they are of March 1933 and January 1935, and I want to call your attention to the seasonal phase of the furniture business, and that these figures based on 1 month compared with another, might be very misleading.

For instance, March is not a high-production month, whereas the later months in the season are the high-production months.

And also in the number of employees. You must take into consideration that the reduction in the hours of employment under the code was fully 20 percent of what it had been normally in March 1933; in other words, the normal hours of working in the furniture business probably averaged about 50 hours a week. There were a few sections where there may be some plants operating under a 55-hour and others where they are operating under a 45- or 48-hour week basis. You must take those factors into consideration in appraising those figures.

Senator COUZENS. What are the hours now?

Mr. IRWIN. Forty hours.

Senator COUZENS. You employ in your industry, pretty generally, skilled labor, do you not?

Mr. IRWIN. No; the employment in the furniture business is a very large percentage of common and semiskilled labor. There is only a limited amount of labor in the furniture business that cannot be trained for its work within a comparatively few months' period. There are, however, certain sections of labor which take years of apprenticeships in order to reach the highest degree, like carving, and the artists that do the decorating and work of that character, and some machine work, but on the average it is what you might call a low-skilled industry as far as the average is concerned.

The CHAIRMAN. Will you point out to the committee just as succinctly as you can, any criticisms that you have to offer, together with such constructive suggestions as you may desire to make?

Mr. IRWIN. Yes, sir; I will be very glad to.

Senator COUZENS. Before you do that, what percentage of your employees would you term "skilled workers?"

Mr. IRWIN. I should not think it would run over 20 to 25 percent, Senator. Of course it depends on what the definition of "skilled worker" is, how long an apprenticeship it requires in order to give one a classification of "skilled work."

Senator COUZENS. Is there any shortage of skilled workers in the industry now?

Mr. IRWIN. No, sir.

Senator COUZENS. What effect would the 30-hour week have on your industry?

Mr. IRWIN. I think it would have the same effect that I feel it would have upon the entire country.

The CHAIRMAN. What is that?

Mr. IRWIN. If you cut down the productivity of men, which you will cut down by fixing the hours of work at any such basis as 30 hours a week, you are going to lower the living standards of the people of this country, and I do not believe you can get away from that economic fact. I do not believe you can get away from the economic fact that a man's living standards and average living standards in this country or any country are directly related to and controlled by his productivity, and that the increase in the productivity in this country during the last 30 or 40 years, which was so marked because of technological improvements, and in 30 or 40 years productivity in this country, increased per man about 60 percent, and that that accounts for the increased standards of living and the changes that we have seen come about in our lifetime.

If you go the reverse way, you are going to lower those standards.

The CHAIRMAN. Suppose that you pay the same amount in the weekly pay envelop for the 30 hours of labor as you now pay for the 40 hours of labor, do you think that would be a burden upon industry?

Mr. IRWIN. No burden on industry at all, but a great burden on society. It does not make any difference to me as a manufacturer——

The CHAIRMAN (interrupting). You mean the prices would be increased?

Mr. IRWIN. Certainly. The prices of all commodities, where we have free and open competition.

Senator COUZENS. Have you any estimate as to the number of employees that can be put to work as a result of the reduction of hours?

Mr. IRWIN. I have not.

Senator COUZENS. You have never attempted to figure that out?

Mr. IRWIN. No, sir. You have to take the total number of the people that are out of work, the unemployed, and figure that in relation to the number of employed that are working, and reduce to a point where you will absorb them all, if in the process you do not bring about a decline in production. The 30-hour plan or any short-work plan, as I see it, is nothing but a spread-the-work plan. It does not increase work.

Senator COUZENS. Have you in Grand Rapids or anywhere else observed the kind of men or the occupations of the men that are now out of work?

Mr. IRWIN. In a general way.

Senator COUZENS. What is it?

Mr. IRWIN. I think it is what you might call an average run. You have relation to skilled or unskilled?

Senator COUZENS. Either one. When we are talking about 10 or 11 million unemployed, I wondered what they were composed of, common labor or skilled labor, or what percentages of either?

Mr. IRWIN. I think they are probably in the same relation that they were when they were all in production, because it takes, running on a reduced time, it takes the same relative proportion of skilled to common labor, so I think it is fair to assume that those now out of employment are in that same relationship.

Senator COUZENS. Do you not think, Mr. Irwin, that the large portion of these men that are out of work now belong to the building trades?

Mr. IRWIN. A substantial amount. The last figures that I saw showed that out of 11,000,000 men unemployed, there were about 6,000,000 in industry and about 5,000,000 in service.

Senator COUZENS. When you say "in industry", do you mean to include the building trades?

Mr. IRWIN. Including the building trades. And I think that about half of the number of productive laborers that are out of employment are in the building trades and the other half in industry. That is just my memory from the last figures that I saw.

Senator COUZENS. Is it your observation that most of the unemployed might be classified as common labor?

Mr. IRWIN. No, it is not. Because you can take the industries that are known to be at a very low ebb, like the machinery industry. The woodworking machinery, taking that just as an illustration. I happen to know something about that. I was in times past a purchaser of machinery and interested in a very small operation of that character. That business is just almost nil today. That business did employ a very high percentage of skilled labor. Unless that labor has found employment in other industries, like the automobile industry or industries of that character that might use the like type of labor, I think it is fair to assume that they are out of employment.

The CHAIRMAN. Now, Mr. Irwin, would you give us your criticisms and constructive suggestions?

Mr. IRWIN. May I put this letter in, which is quite important, and which I started to read?

The CHAIRMAN. Yes.

Mr. IRWIN. This first letter that I read has a note at the bottom showing that this same letter had been sent to six other concerns, the Jensen Bridge & Supply Co., Sandusky, Mich.; U. S. Bridge & Culvert Co., Bay City, Mich.; Yeager Bridge Co., Port Huron, Mich.; Bark River Bridge & Culvert Co.; Bark River, Mich; Charles Gunderson, Escanaba, Mich.; and J. F. Manahan, Big Rapids, Mich. The letter which was enclosed with this is headed "Republic Steel Corporation, Youngstown, Ohio, June 13, 1933, Circular 33-18." (Reading:)

Subject: National Industrial Recovery Act.

To the members of the Toncan Culvert Manufacturers' Association.

GENTLEMEN: As a matter of undoubted interest and of possible benefit to you, we feel that you should be advised that a meeting was held last week by representatives from most of the leading culvert-sheet-producing mills, at which meeting it was decided that it is desirable and essential to have the corrugated-metal industry controlled by the culvert-sheet-producing mills in a manner that will not conflict with the provisions of the National Recovery Act and a recommendation has been made to the National Association of Flat Rolled Steel Manufacturers that a plan for the control of the culvert industry be immediately set up and that plan we can assure you, if adopted, will immediately and effectively curb all unethical competition which has existed heretofore in any territory and will put the control of the sales organizations of the various culvert fabricators throughout the country strictly under the respective mills from whom their supplies are purchased.

Furthermore, the plan, if adopted, means that if any culvert manufacturer representing a given mill refuses to abide by the majority decision of the culvert manufacturers in his territory, then his supply of sheets from the mill from whom he has been accustomed to purchase is immediately shut off and arrangements are such as will prevent his securing a supply of sheets from any other source.

Senator CLARK. Who wrote that letter, did you say?
Mr. IRWIN. The Republic Steel Corporation.
Senator KING. Proceed.
Mr. IRWIN (reading):

From the foregoing, which is necessarily quite general and which cannot be made specific until the recommendation referred to has been approved, or amended, you will observe we are sure, that when the plan is adopted, your tonnage record will be simply a reflection of the sales ability of your organization and your ability to compete with all other culvert makers in your territory on an even basis.

Under the price-fixing plan of the National Industrial Recovery Act, every culvert buyer in the United States will pay identically the same price for his sheet supplies and when the plan has been worked out to a final conclusion their sales prices will also be identical.

It seemed at our meeting last week to be the consensus of opinion that the culvert situation was in such a deplorable condition in all sections of the country as to make it mandatory that some drastic action be taken and taken at once, and for that reason we are hopeful that the recommendation submitted will be approved and, if it is, then you can confidently depend upon it that your territory will be organized in a systematic manner just as quickly as the various mills' representatives can work out all the necessary details.

Very truly yours,

REPUBLIC STEEL CORPORATION,
L. D. MERCER,
Assistant Manager of Sales, Sheet, and Strip Steel Division.

Senator KING. Did you learn who were present at the meeting referred to in that letter? Who called it and who was the dominant factors in it?

Mr. IRWIN. No. This correspondence was furnished to me by Mr. Beach, of the Beach Manufacturing Co., of Charlotte, Mich. Mr. Beach also told me that he was practically at a standstill in the development of his business. He was afraid to go ahead. He was afraid to make new patterns, because he might at any time, because of this power under the N. R. A., be shut off from his supply.

Senator CLARK. In other words, nearly all culverts sold in the country are sold to States and municipalities, and under this arrangement any manufacturer who refused to adhere to uniform prices and uniform bids for these public institutions, would be shut off from his source of supply?

Mr. IRWIN. Yes, sir. Mr. Beach tells me to say to the committee that he will be glad to testify to the receipt of these letters. He hesitated to come to Washington because of the expense entailed in connection with it.

There is another letter in connection with this which was enclosed with this first original letter, which was written to the Republic Steel Co., of Youngstown, Ohio, under date of June 15, by the Jensen Bridge & Supply Co., the company which sent out to the culvert manufacturers the Republic Co.'s letter.

This letter is dated June 15, 1933 and is addressed to the attention of Mr. L. D. Mercer, assistant manager sheet sales, in re National Recovery Act. (Reading:)

GENTLEMEN: In reply to your letter of June 13 to the members of the Toncan Culvert Manufacturers' Association, will say that it is the most interesting letter I have received in a long time. It is my conviction that the passage of this act is a most beneficial bit of legislation that has been passed, for the benefit of the industry, in a long time.

I am taking the liberty of sending a copy of your letter to the various culvert fabricators in the State of Michigan, as I want to go on record with them as being willing and anxious to do everything possible to get our industry out of the rut

and on some kind of a paying basis. I am sure that all the other fabricators feel very much the same as I do, and you can rest assured that I will do everything possible to help this movement along.

Senator CLARK. The movement being to fix prices?

Mr. IRWIN. Just a moment, please. Here is another one, Senator:

I just returned from Chicago this morning, after attending a number of meetings with reference to improving conditions in the wire industry, and we are very hopeful of accomplishing something.

Sincerely hoping that you will do everything possible to help us straighten out our difficulties in Michigan, I remain.

Very truly yours,

JENSEN BRIDGE & SUPPLY CO.,
———— ————, *President.*

I think that letter is one bit of somewhat conclusive evidence if it is authoritative, and it is very easy to ascertain that, as to what is going on under the price-fixing and price-control powers of codes today.

I have some other evidence of a similar character which I will present.

Within the last few years, there seems to have been a new meaning given to the term "fair competition."

Senator KING. Do you mean under the codes?

Mr. IRWIN. About the code time and just before the code time, Senator. The new meaning seems to be that no one shall sell for less than my price. That is my interpretation as I interpret this new meaning.

Senator KING. That is, it is unfair competition if I should happen to sell below your price?

Mr. IRWIN. Yes, sir.

Senator KING. Though it reaps me an enormous profit?

Mr. IRWIN. Yes, sir; that is just it exactly. Prior to this period; and I have been 45 years in business as I testified before, and I have been at all times in a highly competitive business. Every section of the business that I have been engaged in has been a business that was of a highly competitive type.

Senator KING. Two of the Senators who are now on the committee came in after you made your statement. You are in the furniture business and are chairman of a committee opposed to price fixing and production control.

Mr. IRWIN. Yes; I am in the furniture business in the city of Grand Rapids. I am interested in four institutions. We make in some of them household furniture, school furniture, office seating, and office furniture, both wood and steel. My life has been devoted to the furniture business, and almost all sections of that business during all of the period that I have been connected with it, and it has been a highly competitive business. There were times in the school-furniture business in the early days, say before the Sherman law, when all kinds of things were done, but in all recent years that business has been, I think, as competitive as any of the others.

Heretofore and prior to this period, what we knew in business as unfair trade practices were the character of trade practices that are prohibited today by the Clayton Act and the Federal Trade Commission Act. Unfair trade competition was the type of competition which through a desire to obtain monopolistic control, for instance, a great institution, a national organization might sell a product in

one territory at less than its average price in order to crush out a competitor, recouping for its loss in other territories. That is what we always knew as unfair and ruthless competition.

Senator COUZENS. You would like that eliminated, would you not?

Mr. IRWIN. I would. If the Federal Trade Commission Act or the Clayton Act, in order to protect industry against that character of competition which has as its end the development and obtaining of monopolistic power, I think it should be given most serious consideration. I am not here to say whether, and I am not capable of saying whether the present Federal Trade Commission Act and the Clayton Act are sufficient to protect industry in that regard.

Senator KING. Haven't you seen some of the decisions of the Federal Trade Commission and a synopsis of them which would clearly bring under the denouncement of that organization, the practice to which you have referred?

Mr. IRWIN. I think it would, yes; absolutely.

There have been new terms coined in the last few years as applying to methods of competition, "cannibalistic", "caveman", "ruthless", "cut-throat." Those terms have been coined and the claim is they must be avoided because they produce evils to society. I say that they are mythical evils which do not exist and the use of those terms is nothing but invention or a camouflage to put a stigma upon free and open competition.

I think it is ridiculous to say that industry in this country which developed the greatest industrial system ever known in history, must today need government and protection in the operation of its business of a different character than it had prior to 1929. There are many in industry today which, to use the words of Virgil Jordan in an address he made before the National Association of Manufacturers in New York last December said, "Many in business today have Government-mother complex."

The object of this new philosophy is to put a straight-jacket upon those in business, and to a large extent freeze it where it stands today.

I fail to see upon what law-making theory that those in any given industry could be considered to have a vested right in that business which should entitle them to make laws in connection with that business and under which business in that line should be done. I think it is unsound. And to say that you are not giving it to industry under N. R. A. but are giving it to government is but to beg the question, because there is no bureau of government that can be built up that is capable, that can be manned with men capable of distinguishing as to what is right and what is wrong in relation to these detailed rules. You must bear in mind that everybody who approaches government under those conditions from industry naturally have a selfish interest. Industrialists have the same human selfish interests that runs through all mankind. And what can the deputy administrators do but take the word of those who have a selfish interest in the decision?

If you strike out in enacting a new N. R. A. the fair-trade provisions from that which has to do with price and production control, I think it will be found that that section of the law is even deader than the dodo, because the industrialists would not spend their time, many of them, in connection with methods of competition such as

bribery and other unfair methods of competition, all of which are, I believe, covered by the Clayton Act.

It seems to me, gentlemen, that it is ridiculous in a great country like this with its great area, the great diversity of business, including everything from the traveling tinker to giant corporations like the United States Steel Co., to say that it is possible for any bureaucracy in the city of Washington to lay out detailed rules for the operation of those various businesses.

Take our industry, for instance. It is an industry of small units. I believe the average is not an employment of over 75 or 100, if it averages that much.

Senator COUZENS. What is the maximum.

Mr. IRWIN. The largest one that I have heard of recently is a firm in the South that was said to be now employing 1,400 men.

Senator COUZENS. Do you think that is the largest in the whole industry?

Mr. IRWIN. I do not know of any larger, unless perhaps it might be the Crayler Manufacturing Co., which has several plants. His combined employment might be more than that, but in the city of Grand Rapids today there is not a plant there employing as many as a thousand men at the present time.

Senator COUZENS. Is it your judgment that that is a rather ideal condition, rather than these large aggregations of capital and production?

Mr. IRWIN. Yes, Senator. I think one of the great dangers of this country today is the aggregation of capital in these large industrial corporations. I think there is an ideal condition existing in furniture business today so far as society is concerned. There is free and open competition. You can count on the fingers of a one-armed man, I think, all of the people today in this country in that business that are worth over a million dollars. I don't know who any of them are; I could not name one of them.

I have been in Grand Rapids for 45 years and I have been engaged in the furniture business there. I came there when the old school, the men that started the business, were still active. I do not know of two men in the city of Grand Rapids in the furniture business that ever died leaving an estate of $1,000,000.

I say that condition in industry is the ideal condition so far as society as a whole is concerned, if those units are large enough to produce the product at the minimum cost, and I think they are.

It has been said that small industries need this protection. I think that is a ridiculous statement if I may use a word of that type. Small industry does not want it, as is evidenced by evidence which I will give you a little later.

You give to small industry in this country a free field with the Sherman law and the Clayton Act and other acts that prohibit unfair competition, and no one will need to shed any crocodile tears for small industry.

Senator COUZENS. Have those acts that you refer to been enforced?

Mr. IRWIN. So for as my experience is concerned, Senator, in reference to the Clayton Act and the Federal Trade Commission, or in other words, what we have called "unfair competition" heretofore, I think they have been. My perspective may be somewhat limited, but insofar as my experience has gone, I think the Sherman law has

never been properly enforced in this country. Its enforcement has been sporadic. There have been times when a fairly good job has evidently been done, but I do not think it has ever been enforced the way it should be enforced in the protection of society.

Senator COUZENS. It certainly has not been enforced so far as the Steel Corporation and the Aluminum Co. and others like that.

Mr. IRWIN. I would not think so on some things that I think I know.

Senator KING. Generally speaking, in your industry—that is in the furniture business—and I assent to your views about the necessity and advantage for the good of society to have a diffusion of industry—has there been unfair practices?

Mr. IRWIN. In our business?

Senator KING. Yes; or generally.

Mr. IRWIN. No, not to any degree at all. It is what some man might say is an unfair practice. I would say the nearest to what I would classify as an unfair trade practice in our industry was the appropriation on the part of one organization of another one's design. There should be a law establishing a property right in design the same as there is establishing a property right in invention, and we are going to move—industry is going to move in this session of Congress asking for just such a bill.

Other than that, the unfair trade practices—as I say, if you interpret when some man sells goods for less than you think he can make them for or you can make them for as being an unfair trade practice, we have lots of that, but I do not think that that can properly be classified as an unfair trade practice. If a man sells goods too long under cost, the sheriff comes around and gets him in the end.

Senator BLACK. As I understand it, your idea of competition is that if one can sell cheaper than the other, he should do it?

Mr. IRWIN. Of course. It is the development of individual initiative and free and open competition, and we have gone as far as we have in this country because of that, and any time you stop that you are going to stop development. There is not any basic reason, if our laws that are passed by Congress are based on sound economics, why we cannot, after this depression—I think the cycles of depression are things you will never be able to get away from as long as you have a capitalistic system—but I think after this depression, if we have laws based upon sound economics, we will rise from this depression as we have from every depression, and the people will come to a higher standard of living than we have ever had before. If we encourage productive methods, technological development, and thereby increase a man's productivity, there is not any question but that we will increase the standard of living.

Then it should be looked to to see that the distribution of that created wealth, is a fair distribution, and in my humble judgment we never can get back to a prosperity condition in this country until we are again producing the amount of wealth at least that we were producing in 1929. I do not mean existing wealth, I do not refer to the brick and the mortar in this building and all the other buildings, but I am talking about the daily created wealth. That is where you get buying power. If we want to increase buying power in this country, we must have more production and then see that that production is properly distributed, the right amount to capital, the right amount for government, and the balance is bound to go to the purchaser.

Senator COUZENS. Is there any phase of N. R. A. that you believe should be renewed?

Mr. IRWIN. Yes, sir.

Senator COUZENS. Are you coming to that later?

Mr. IRWIN. I had mentioned it before you came in, Senator.

Senator COUZENS. I beg your pardon.

Mr. IRWIN. The minimum wage section. I think the minimum wage section of the N. R. A. Act is absolutely needed in this country. I said that I entirely agree with Mr. Green in his statement yesterday that there should be one, but I think it should be a single base for each industry, leaving it to either individual or collective bargaining to fix the wage rates above that. I think if you did not have a minimum wage, with employment such as it is today, the price of labor would be immediately driven down to where it was before the passage of this act, because there is an oversupply of labor at this time in proportion to the demand.

Senator COUZENS. To that extent, N. R. A. has been a good thing, you think?

Mr. IRWIN. I think so. And anything that it may have done in relation to the child labor prohibition. I know that has not made any material change in our State because we had State laws which prevented it. It may have changed a year or two in the time that a boy of 14 could work. He might have to wait until 16, and that may be questionable as to whether that change was advisable. However, it has made no material difference in our State.

Senator COUZENS. Do you believe in maximum hours?

Mr. IRWIN. Not fixed by statutory law.

Senator COUZENS. By some governmental agency?

Mr. IRWIN. No; I do not believe in it. I think the question of hours should be left as it is in the past. In the last 30 years, prior to 1929, there has been a reduction in the hours of labor in this country of about 13 percent. It was a natural process going on. The question of the shorter workweek is a social question and not an economic question. As an economic question it is going to reduce—that is, when you get below a certain number of hours of labor, where production will be at its maximum per man, you are going to reduce the production and thereby reduce the standard of living. During this period of 30 years——

Senator CLARK (interrupting). Do you believe that all of the 8-hour laws should be repealed?

Mr. IRWIN. It is not for me to say.

Senator CLARK. I want to get your theory.

Mr. IRWIN. I am giving you my economics as I see it.

Senator CLARK. Would you repeal, for instance, the 8-hour laws as applied to railroad employees?

Mr. IRWIN. No, not necessarily.

Senator CLARK. If your theory is correct, it is not a matter of Government regulation.

Mr. IRWIN. I think you have got to take into consideration the hours that have been developed in industries in which there were no fixed hours by statutory law. Mr. Green yesterday spoke of there being still 60-, 70-, and 80-hour workweeks in this country. I have lived in an industrial town for 45 years. We have quite a diversity of industry there. Forty-five years ago we had a 60-hour week in Grand

Rapids. It then dropped to 55 and later to 50 hours a week. I don't know of any 60- or 70- or 80-hour week in industry today in any industry that I know anything about, unless perchance an occasional man on a watchman's job or a sitting job of that character, but far and wide there is not such a thing existing in this country today.

So I think that the natural processes, the natural desires of people for greater leisure—but it must be in relation to their income—have brought about in a natural way the reductions that should come.

I say when by law or government, or under code laws, you arbitrarily within a few months cut down the permissible hours of labor in this country to a 40-hour week or take off 20 percent, you have set the country back and the living standard back 7 years, because it was 7 years prior to 1929 there was an increase in man's productivity equal to that amount.

Senator BLACK. Mr. Irwin, how many months did your factory run last year?

Mr. IRWIN. We ran almost every day.

Senator BLACK. How many did you run the year before?

Mr. IRWIN. What I mean, our operation is almost a continuous one. We may shut down for a few days at a time, but it is regulated by the amount of work we have, and then the number of employees.

Senator BLACK. Have you been running continuously through the depression?

Mr. IRWIN. No, sir.

Senator BLACK. How many months did you run in 1933?

Mr. IRWIN. Again I say we ran 12 months, but with a very much reduced crew.

Senator BLACK. What reduction, would you say?

Mr. IRWIN. 1933?

Senator BLACK. Yes.

Mr. IRWIN. Figuring the full time, I do not think we were averaging over 35 or 40 percent employment on an hourly basis. Probably not over 35.

Senator BLACK. In 1932 what percentage did you run?

Mr. IRWIN. 1932 was a little better, as we hit the low spot in 1933; 1932, possibly 40 percent.

Senator BLACK. In 1931, what did you run?

Mr. IRWIN. I am just giving you this from memory.

Senator BLACK. Yes; just approximately.

Mr. IRWIN. I would say possibly 50 or 60.

Senator BLACK. In 1930, what did you run?

Mr. IRWIN. I think our 1930 operations may have been not over 60 percent. Our business was a little better when we reduced our staff——

Senator BLACK (interrupting). In 1929, what did you run?

Mr. IRWIN. Fifty hours.

Senator BLACK. In 1929 then you ran 100-percent capacity?

Mr. IRWIN. Practically so.

Senator BLACK. As to the whole year?

Mr. IRWIN. The continuity of working time in the furniture business is as good as any industry that I know of. In other words, we have not the peak seasons to the same degrees that exists in many other industries.

Senator BLACK. That is the average during that 5-year period, 58 percent?

Mr. IRWIN. Yes.

Senator BLACK. Society lost 42-percent capacity production there during the 5 years?

Mr. IRWIN. Yes, sir.

Senator BLACK. And your business was running a great deal better than an average business in return, wasn't it?

Mr. IRWIN. I do not know as to that. I may be a little high in my figures. I did not think there was any business that was much worse than the furniture business.

Senator BLACK. You did not think any was much worse than it?

Mr. IRWIN. No; I did not think so.

Senator BLACK. You realize, of course, that we have been having a so-called "cycle" like that all through the years?

Mr. IRWIN. Yes, sir. I have been through a number of them starting with 1893.

Senator BLACK. That is a pretty good average, 58 percent, is it not, for any 5-year period that you can select for business throughout this country?

Mr. IRWIN. If you are speaking of 58 percent of our maximum production, I did not intend to convey that thought to you, because our business has not been anything like 50 percent during these last few years.

Senator BLACK. What has it been, would you say, on an average for the last 5 years?

Mr. IRWIN. Since 1929—eliminating 1930 because we did not get in our business the full effect of the depression until the year following—but from 1930, it has not been from 33⅓ to 40 percent volume.

Senator BLACK. In other words, through that period of years, society was losing that 66 percent of the production that your business could have given it if the people had been able to buy?

Mr. IRWIN. If we had been able to keep the machine going.

Senator BLACK. And you would have been able to keep the machine going if you had been able to sell?

Mr. IRWIN. Yes, sir.

Senator BLACK. And of course, under our system, the thing that makes it run is purchasers with money. You cannot afford to operate your factory unless you can sell at a profit?

Mr. IRWIN. No.

Senator BLACK. May I ask you in that connection then——

Mr. IRWIN (interrupting). But pardon me, Senator. I do not want to admit that it is just purchase with money. It is production of other products that may be exchanged. There is a great difference between money and wealth created by production.

Senator BLACK. All the difference.

Mr. IRWIN. The money is just a standard medium of exchange, but in reality the furniture man trades furniture for automobiles. He trades it for clothing. The more furniture he makes, the more he will have to trade.

Senator BLACK. So that of course the thing that we need, as you stated a while ago, and with which I fully agree, is the most production we can get out of our system?

Mr. IRWIN. Yes, sir.

Senator BLACK. The fact that you had 33⅓ percent there, that is somewhat in line according to your observation, with the other business enterprises in this country, is it not?

Mr. IRWIN. Yes, sir. The consumer industries have not gone at so low a rate of production as the durable goods industries. The consumer goods have gone much higher in the rate of production.

Senator BLACK. You mean the things that people consume everyday.

Mr. IRWIN. The seat of our troubles today is in the durable goods industries.

Senator BLACK. You had run during part of the time at full capacity, had you not?

Mr. IRWIN. I do not think our plant has operated a day at full capacity since 1929.

Senator BLACK. Did it run at full capacity in 1929?

Mr. IRWIN. Pretty close to it; not quite. There was a little dropping off in business from 1927. I think 1927 was the peak. Building started to decline about that time and there was a general decline in the furniture business.

Senator BLACK. So that in reality it has now been about 8 years since your furniture factory ran at capacity?

Mr. IRWIN. As I say, I do not think 1929 was quite capacity, but it was a good average business. I would like to see it back to that.

Senator KING. In the 5 years preceding that, were you running at full capacity?

Mr. IRWIN. Yes sir.

Senator BLACK. How long did you run at full capacity in the 1920's? Has there ever been a time that you ran at full capacity 5 years continuously?

Mr. IRWIN. We had the depression of 1920 when the prices broke after the high prices following the war. That depression only lasted about 9 months. Within the middle of the next year—1921—we were back to about the normal business, and we went from 1921 to 1929 through a period of what I would say was as good a period as this country has ever seen within my time.

Of course you realize that there is no period of the greatest prosperity of which we have a record where production is up to 100 percent capacity. The statistics show that even in the best period of 1928 or 1929, there was a potential production of 15 or 20 percent in excess of what was produced.

Senator BLACK. That is according to Brookings?

Mr. IRWIN. That is according to Brookings; yes, sir.

Senator BLACK. Are you familiar with the other report that was made by the Government engineers which showed it was only about 55 percent?

Mr. IRWIN. No, I am not.

Senator BLACK. In that connection, however—we are talking now about society losing—when you were running at one-third did you discharge two-thirds of your employees or reduce their hours or their earnings? Which course did your factory pursue?

Mr. IRWIN. We maintained substantially the same working hours. They were working upon that basis. But there were years there that the men might only have 2 or 3 days work a week. At the same time, the day they did work, they worked 9 hours.

Senator BLACK. In other words, what I was getting at, was this: Instead of discharging this two-thirds when you were only running at one-third capacity, you would retain them on the pay rolls to keep your organization?

Mr. IRWIN. We brought it down, Senator, to what you might call a minimum working crew, and we retained our best men, naturally.

Senator BLACK. So that as a matter of fact, when you were running at only one-third, it is true, is it not, that ordinary business sagacity and caution demanded that you reduce your pay roll in accordance therewith.

Mr. IRWIN. You absolutely have to. We cannot make any more than we can sell, for very long.

Senator BLACK. That is the system?

Mr. IRWIN. We do not want the sheriff to come along.

Senator BLACK. So that as a matter of fact, during that period that you were running one-third over this period of years, there were that many people who were either thrown out of a job or had their earnings reduced in proportion to the decreased business, the decrease being two-thirds. That being true, those people either had to be supported by someone else or supported by the Government or die?

Mr. IRWIN. Yes, sir.

Senator BLACK. So that it became a question whether they would be supported by voluntary contribution if they could not get any other job or supported by the taxes paid by you and other business men?

Mr. IRWIN. Yes, sir.

Senator BLACK. And the country at the same time was suffering the loss of the products that could have been made if your factory had run and these men had not been idle, thereby reducing the living standards?

Mr. IRWIN. We are still suffering.

Senator BLACK. Still suffering?

Mr. IRWIN. Yes, sir.

Senator BLACK. Both the public and the men, because of this idleness of men and machines?

Mr. IRWIN. Absolutely.

Senator BLACK. Your problem of course is to find somebody that will buy the output of your factory, is it not?

Mr. IRWIN. Yes, sir.

Senator BLACK. And your taxes run on just the same, approximately, do they not?

Mr. IRWIN. Yes, sir.

Senator BLACK. And your interest, if you have any interest, or those businesses that have it?

Mr. IRWIN. Yes, sir.

Senator BLACK. So that if you had a full time employment in that factory and you could sell your goods so as to authorize running it full time, you would be selling those goods and could afford to sell them at a great deal cheaper rate than you could afford to sell them today, could you not?

Mr. IRWIN. Yes, sir.

Senator BLACK. And that being true, do you figure that society would sustain any very great loss if you would put these people back to work at a reduced hour and pay those whose hours were reduced,

the same wage that you are paying them, would society get more or less? We are talking about society now—would it get more or less production?

Mr. IRWIN. In the first place, you cannot pay them the same wages.

Senator BLACK. I will get to that in a moment. In the first place, if you would put them back to work at the same wages, reducing the hours, would you produce more or less today?

Mr. IRWIN. I do not know whether I get your question.

Senator BLACK. If you were to reemploy two-thirds of the men and run at full capacity and employ them at 6 hours and pay all of them what you are paying them now for whatever hour-day you are running, 8 or 10 or whatever it is, would society get more furniture or less furniture?

Mr. IRWIN. If we filled our factory to capacity on the 6-hour basis, we can produce more goods than we are producing today, I think, on a 40-hour basis because we are nowhere near up to full employment. But of course we cannot do that, Senator, unless we can sell it.

Senator BLACK. I will get to that in a moment. That is the other part. I understand what you have in mind, but it is true that if you did run that factory to capacity, whatever wages you pay the men—we will assume first paying the same hourly wage you are paying now—you would produce at a great deal cheaper per unit, would you not?

Mr. IRWIN. Yes; if we could run the factory to capacity we would produce more. If we run it 50 hours a week, we will produce a lot more furniture than if we operate at 30 hours a week.

Senator BLACK. And produce it cheaper, would you not?

Mr. IRWIN. The more we can produce, the less will be the overhead. So if we run 50 hours a week, we can produce a great deal more furniture than we can produce on any 30-hour operation.

Senator BLACK. So that we get down to the simple problem that we have in this country is that we cannot sell it today as fast as we can produce it. That is it, is it not?

Mr. IRWIN. That is the situation that exists today.

Senator BLACK. There are 20,000,000 people that you help to feed with your taxes?

Mr. IRWIN. Yes, sir.

Senator BLACK. That goes in as a part of the expense of operating your daily business, does it not?

Mr. IRWIN. Yes, sir.

Senator BLACK. And to that extent it adds to the cost of that furniture, does it not?

Mr. IRWIN. Yes, sir.

Senator BLACK. So that if you could be relieved of a tax of feeding the hungry and the unemployed, that also would justify you in producing at a cheaper price per unit than you can produce today, would it not?

Mr. IRWIN. It would enable us to do it. If our taxes are less, of course the cost will be less.

Senator BLACK. So that today, you and every other business enterprise in America are having to put out a greater outlay for the expense of production per unit by reason of two causes—one that you cannot run your maximum capacity, and the other that you are

having to pay additional taxes to support the very unemployed that are not working and are not buying your goods?

Mr. IRWIN. No question about it at all.

Senator BLACK. Do you think that if we had a 30-hour week today—forgetting now the wage question for just a moment—and put all of them to work producing at capacity, that not only your business but every other business in this country would have a greatly increased output at a much reduced price or cost per unit?

Mr. IRWIN. No, I do not think so. In the first place, you cannot necessarily put them all to work on a 30-hour week——

Senator BLACK (interrupting). I am assuming they are all put to work on a 30-hour basis. What I wanted to know is first, in your judgment, would that greatly increase production in America?

Mr. IRWIN. I would have to figure the number of employed against the number of unemployed in order to answer your question. I have not those figures before me, but the point I want to make is that the shortening of the workweek or the working time to 30 hours does not create more work; it merely spreads the work. The reduction from 50 to 40 hours under the code did not create more production; it merely spread the work. And I think that during the last year and a half, the most forgotten man in this country was the good workman with a job who had to give up 20 percent of his wealth-producing capacity in order to take care of the person who was out of employment.

Senator BLACK. He did not object to that if he had the same wages, did he?

Mr. IRWIN. I am heartily in accord with the idea that society must take care of and should take care of those that are out of employment, but I say that you put too great a burden upon the working men of this country until you had at least to a greater extent tapped the pools of wealth of this country in order to take care of the unemployed.

Senator BLACK. Which way would you rather support them, by taxes or by wages?

Mr. IRWIN. Wages, of course. But when you take away from one man and give to another man——

Senator BLACK (interrupting). And you do that by taxes, do you not?

Mr. IRWIN. You are doing the same proposition on shortening the hours. I can give you cases. You take a man for instance in our employ that was getting $25 a week. He was getting that for 50 hours. The time was shortened to 40 hours; and he still gets his $25 a week because we advanced to compensate for the shortening of hours. For a few months that man had a little advantage before the reflex of the increases hourly cost came into the products that he buys, and he had 10 hours more of leisure time.

But what is the situation today? As a result of the increased cost, his living costs have gone up, so instead of getting a benefit from that, it is the exact equivalent of a cut in his pay.

Senator BLACK. Let us see about that. What percentage of the cost of your material is labor?

Mr. IRWIN. About 33⅓ percent.

Senator BLACK. And 33⅓ percent being your labor cost——

Mr. IRWIN (interrupting). Wait a minute. I want to correct that statement. If you say what percentage of the cost of furniture is

labor, I think I would have to answer, near to 90 percent, because there is labor in what we call our raw material.

Senator BLACK. What is the added value of the raw products that you have in the furniture business—what is the proportionate cost of labor with the other elements entering into it?

Mr. IRWIN. As we buy the raw products——

Senator BLACK (interrupting). That is what I am talking about.

Mr. IRWIN. About 33⅓ percent.

Senator BLACK. All right. It is true that you have increased production in 1934, have you not?

Mr. IRWIN. We have sold more goods.

Senator BLACK. Sold more goods?

Mr. IRWIN. A few more. Wait a minute, I want to correct that. Our fiscal year in our business comes in June, and from my latest figures, I do not think our business for the year which will end the first of the coming June, for that fiscal year will be as large as it was the year before.

Senator BLACK. How much have you increased prices?

Mr. IRWIN. I would say that the increase in prices has probably been 15 percent.

Senator BLACK. And your cost of labor is 33⅓——

Mr. IRWIN (interrupting). We had about a 25-percent increase in the cost of labor.

Senator BLACK. Have your profits gone up or gone down?

Mr. IRWIN. "We ain't got no profits."

Senator BLACK. Have your losses increased or decreased?

Mr. IRWIN. Our losses in the last fiscal year have been a little less than our loss for the year before, but not so much, and when you take the item of what we call loss on inventory, I think the operating loss was not far different.

Senator BLACK. How much was it this year?

Mr. IRWIN. I do not know.

Senator BLACK. More or less?

Mr. IRWIN. I am not able to say because we are not to the end of the fiscal year, but I feel reasonably sure that we are going to have a substantial loss on this year's operation.

Senator BLACK. Will it be more or less than it was in 1932?

Mr. IRWIN. I think it will be a little less than it was in 1932; I hope so.

Senator BLACK. And you paid your labor 25 percent more?

Mr. IRWIN. We have not paid our labor 25 percent more measured by the purchasing power of his wages. In dollars; yes.

Senator BLACK. You have paid him 25 percent more in money?

Mr. IRWIN. In dollars; yes.

Senator BLACK. And you have raised your prices 15 percent?

Mr. IRWIN. Yes.

Senator BLACK. You do not claim, do you, that there is any justification on earth for that company raising its prices the exact amount that it raises the prices of labor?

Mr. IRWIN. This happened to work out that way in the end.

Senator BLACK. The exact amount? Even though it only costs one-third?

Mr. IRWIN. It costs more than one-third. You have to take the labor elements that enter into the raw materials, which is the lumber

that we buy that costs us $100 per thousand. What is it worth in the tree? Five dollars or $10 a thousand at the very most. It is the cost factors of labor which regulate the ultimate cost of that lumber through the various processes including the cost of transportation.

It is the same with coal in the ground. What is coal in the ground worth? You can buy millions of acres at 5 cents an acre, and coal costs us $5 or $6 a ton delivered in Grand Rapids. It is the element of labor that you have to take into consideration.

Senator BLACK. I have before me the report of profits of the Continental Can Co., which is one of the two big companies that manufacture cans, and I find its profits in 1927, the net before dividends was $4,439,000; and in 1934 was $10,707,000. Do you think that there would be any room there to increase wages to enable them to buy more of your furniture?

Mr. IRWIN. I would say that there might be, or to reduce prices. They may possibly be doing what they were trying to do in the culvert business according to this correspondence; I don't know.

Senator BLACK. That is correct. But we do agree on this, do we not, Mr. Irwin? We have got to have, and I want to say that, in the main, I am in sympathy with the position you have, that what we have is a system to produce that can produce a great deal.

Mr. IRWIN. Yes, sir.

Senator BLACK. But we can produce it faster than we can find people who are able to buy it with the incomes they receive.

Mr. IRWIN. As it stands today; yes, sir. We have got to get the machine under way. We have got to work and analyze what it was that brought us out of the other depressions and see if we cannot apply those principles instead of changing the entire economics of our system, in my judgment.

Senator BLACK. You will agree with me, will you not, that what we need in this country is an increase in the real wages and an increase in the real farmers' prices?

Mr. IRWIN. What we need in this country is an increase in production. That in and by itself will give an increase in the wages measured by the proper standard.

Senator BLACK. All right. Increase in the production; I agree with you there.

Senator KING. Senator, may I interrupt you?

Senator BLACK. Yes.

Senator KING. Mr. Irwin has to leave, and we have to adjourn at 12 o'clock.

Senator BLACK. He has brought up a question in which I am very much interested, and I want to ask more questions. I agree that what we need is an increase in production, and, agreeing with that, are you ever going to produce any more until you have some customers who are able to buy it?

Mr. IRWIN. We are not.

Senator BLACK. You have no idea of doing it?

Mr. IRWIN. We cannot do it.

Senator BLACK. And neither will any other business enterprise in this country?

Mr. IRWIN. I do not think so.

Senator BLACK. So what you want is more people able to buy in order to have an increased production; is that not so?

Mr. IRWIN. Absolutely. If you can get the machine started, some making furniture and some making other things, we will have the commodities to exchange.

Senator KING. Now, Mr. Irwin, will you procede with your statement?

Mr. IRWIN. All right, if I may. I think I will finish well within the time.

What I claim or state is that, in my judgment, free and open competition is the governor which automatically regulates the return to capital. If you can maintain the Sherman Antitrust law, that will take care of capital's return.

As I said before, I think the furniture business is a fine example of the operation of the laws of free competition.

I say that it is a false theory on the part of industry that profits should come before recovery. I think we ought to accept the economic fact that profits cannot generally come until after we have recovered. Industry in this country is asking of the administration and Congress that we have recovery before reform. I think by the same analogy they should say that the profits should come after recovery.

There has been a great deal said about the relation of profits to wages, and that a concern must be a profitable concern in order to pay a good wage. I want to say to you that it is my experience in business, and I think it applies to all business that there are other factors than profit which is really what regulates the productive wages. You have many examples of national institutions in this country, profitable ones, that are notoriously payers of low wages. You can take in almost any city where there are half a dozen factories operating on one kind of production, and one may be or two may be very profitable, and another operating at a loss, and they all paying substantially the same wages. So I think it is an unsound principle to say that it is the profit factor that we must have in order to raise wages.

Senator COUZENS. How do you account for those industries which you have just described that are paying the same wages, some operating at a profit and some not? What is the cause of that?

Mr. IRWIN. If business conditions are normal, it may be a question of management. There may be some other factor.

Senator COUZENS. What other factor outside of management? I am trying to get at the bottom of it.

Mr. IRWIN. There may be an industrial change. A man might have a certain line of furniture, for instance, and there may be a style change, and in a sense it takes away from him what he thought was a sound business. Just the same as we have changes in many things in industry.

Senator CONNALLY. Obsolete plants and things of that sort?

Mr. IRWIN. Sure. There are various factors that change.

I know in my business, many times we would have a good year and do pretty well and with no apparent change in business conditions, but a change in the demand for the particular product the next year, and our results would be quite different, but at the same time we were paying the going wages in the community. So I say it is not a prime factor.

I just want to present another little bit of evidence in connection with price fixing under codes and what has been going on and what is still going on, even though in this particular code price fixing has been abolished.

All of the mahogany lumber that comes into this country comes in in the form of logs and is sawn in this country. It is not only in the most general way a competitor with other lumber but the total quantity of it is comparatively small. As you know, it is a high-grade wood, and if a man wants furniture or trim for a building of mahogany, if the style is such as to demand that wood, the fact that it cost $10 or $15 or $20 a thousand more than oak would not make any difference; he would not care. So only in the most general way is it competitive.

This material comes in in the form of logs and is sawn in this country. A few years ago the price of sawing, taking the logs from the liter in the days when we had custom mills in New York, the price was $10 a thousand. I can have it sawn today for $15 a thousand, which goes to show that any increase in the cost brought about by N. R. A. could only have affected a cost element of $15 a thousand. But since that code went into effect the prices of mahogany were raised an average of about 49 percent. For instance, 4/4 was raised from $92 to $137; 8/4 from $107 to $157.

Senator COUZENS. That was not brought about by any increased wages in America?

Mr. IRWIN. There is only at the maximum $15 worth of work done in this country including the profit and overhead in the sawing operation.

Senator COUZENS. Did that 49 percent increase come about through an agreement of the sellers or did it come about by any increased wages anywhere?

Mr. IRWIN. The wage could only affect the most minor part of it. It came about as the result of the fixing of the prices under codes.

About 2 months ago the price-fixing provisions, or "cost protection" as they call it, was thrown out of the lumber code, and there has been a break in the prices since that time—and I have the figures here to present that—in almost every kind of lumber except mahogany; and mahogany is holding the same price today as while they had price-fixing codes.

I have copies of letters by some of these concerns to their salesmen. I dislike to make them public because I think the man would lose his job, which goes to show that they are still getting together and agreeing upon prices.

Senator COUZENS. That would be done then simply by the importers, would it not, practically?

Mr. IRWIN. Yes, sir.

Senator COUZENS. Would the benefits go back to Honduras or would they stay in the importers' pocket?

Mr. IRWIN. They would stay in the importers' hands. I will say that in times past I have imported hundreds of thousands of feet of logs. I have a price now where I can get logs into this country and cut it into lumber for about $100 a thousand against having to pay $147, but they have an importing quota, and I do not know yet whether I will be able to get the quota, but I suspect I will have quite a time getting one.

I want to put into the record a lot of figures—you may not want to copy them all in the record—but a price list to show under date of January 15 the prices issued by the Northern Hardwood Lumber.

Senator KING. This year?

Mr. IRWIN. This year. This is after the price-fixing was out. They had a meeting in Chicago, and here is a price list.

Senator KING. Hand that to the stenographer and put it in the record.

(The price list referred to is as follows:)

Price list, Jan. 15, 1935, showing delivered prices at all points in lower peninsula of Michigan, rough-air dried

BROWN ASH

	Free alongside	Select	No. 1 common	No. 2 common	No. 3 common		Free alongside	Select	No. 1 common	No. 2 common	No. 3 common
4/4	$51.50	$42.50	$36.50	$30.50	$24.50	6/4	$61.50	$54.50	$46.50	$36.50	$25.50
5/4	56.50	47.50	39.50	32.50	25.50	8/4	66.50	59.50	49.50	38.50	26.50

BASSWOOD

4/4	$65.00	$55.00	$44.00	$31.00	$23.00	10/4	$95.00	$85.00	$70.00	$48.00	-------
5/4	70.00	60.00	47.00	33.00	25.00	12/4	100.00	90.00	75.00	53.00	-------
6/4	73.00	63.00	47.00	33.00	25.00	3/4	57.00	49.00	36.00	26.00	-------
8/4	80.00	70.00	55.00	35.00	25.00						

4/4:	
4 and 6 feet, No. 2 and better	$33
3½ to 5½ inches No. 2 common	$33
All 10 and 12 feet	[1] 3
5/4 and thicker: All 10 and 12 feet	[1] 5
Standard lengths No. 1 and better:	
8 inches and wider	[1] 7
10 inches and wider	[1] 15
12 inches and wider	[1] 30
4/4:	
8 feet and larger, long cutting:	
No. 1 common	[1] 3
No. 2 common	[1] 15
Key stock:	
No. 1 and better	70
On grades	$80 and 60
5/4:	
Key stock, No. 1 and better	75
On grades	$85 and 65
1 by 4 inches, 6 to 16 feet, 1 and 2 face clear	55
1 by 5 inches, 6 to 16 feet, 1 and 2 face clear	70

BUTTERNUT

	Free alongside	No. 1 Select	No. 2 common	No. 3 common		Free alongside	No. 1 Select	No. 2 common	No. 3 common
4/4	$75	$45	$33	$23	6/4	$80	$50	$38	$25
5/4	80	50	38	38	8/4	80	50	38	25

[1] Add.

Price list, Jan. 15, 1935, showing delivered prices at all points in lower peninsula of Michigan, rough-air dried—Continued

BIRCH

	Free alongside	Select	No. 1 common	No. 2 common	No. 3 common	No. 3 A. and S. D. no. 3
4/4	$66	$53	$46	$35	$24.50	$28.50
5/4	71	56	48	38	26.00	31.00
6/4	76	61	53	43	26.00	31.00
8/4	81	71	63	45	27.00	33.00
10/4	96	81	78	48	----------	----------
12/4	101	86	83	53	----------	----------
16/4	146	136	123	----------	----------	----------
5/8	55	45	33	26	----------	----------
3/4	58	48	36	28	----------	----------

1 by 4 inches all lengths, no. 3 ---------- $24.50
1 by 6 inches all lengths, no. 3 ---------- 25.50
1 by 4 inches all lengths, no. 1 ---------- 46.00
1 by 4 inches all lengths, no. 2 ---------- 34.00
Standard stock 4/4 and 5/4 Selects and better approximately 45 percent 8-inch and wider this to contain 10 to 15 percent 10-inch and wider, approximate 45 percent 14 and 16 feet:
For each additional 10 percent of 8-inch and wider ---------- Add $2.50 per M feet
For each additional 10 percent of 14 and 16 feet ---------- Add $2 per M feet
For all 6- to 7-inch Selects and better ---------- Deduct $5 per M feet
Specified widths narrower than 6 and 7 inches, price shall be same as for random widths, except when specifically provided for.
Straight grained, free from cross grained or curly stock ---------- Add $20 per M feet
1 by 4 inch and wider, 4 and 6 feet:
No. 1 common ---------- Add $45
No. 2 and better ---------- Add $37
No. 2 common ---------- Add $35
Red birch ---------- Add $10
1- by 4-inch, 6 to 16 feet:
1 and 2 face clear ---------- Add $51
2 face clear ---------- Add $66
1- by 5-inch, 6 to 16 feet:
1 and 2 face clear ---------- Add $59
2 face clear ---------- Add $86

OAK

	Free alongside	Select	No. 1 common	No. 2 common	No. 3 common	No. 3A common
4/4	$73	$58	$48	$37	$24	$26
5/4	78	63	53	38	25	----------
6/4	83	68	58	38	25	----------
8/4	93	78	63	43	26	----------
10/4	113	93	78	53	----------	----------

SOFT ELM

	Free alongside	No. 1 common and select	No. 2 common	No. 3 common		Free alongside	No. 1 common and select	No. 2 common	No. 3 common
4/4	$46.50	$34.50	$30.50	$24.50	8/4	$51.50	$39.50	$32.50	$26.50
5/4	46.50	34.50	30.50	26.50	10/4	61.50	44.50	34.50	----------
6/4	46.50	34.50	30.50	26.50	12/4	71.50	54.50	39.50	----------

4/4, narrow:
No. 2 and better ---------- $34.50
No. 1 common ---------- $2 less than No. 1 and select

Price list, Jan. 15, 1935, showing delivered prices at all points in lower peninsula of Michigan, rough-air dried—Continued

ROCK ELM

	Free alongside	No. 1 common	No. 2 common	No. 3 common		Free alongside	No. 1 common	No. 2 common	No. 3 common
4/4	$73	$48	$29	$24	8/4	88	73	36	29
5/4	78	53	31	26	10/4	98	83	48	
6/4	83	58	31	26	12/4	108	93	53	38

4/4:
Narrow, No. 2 and better $43
Sap jackets 51
Bridge plank ..... Add $4 to No. 3 price

SOFT MAPLE

	Free alongside	Select	No. 1 common	No. 2 common	No. 3 common
4/4	$57	$52	$42	$31	$23.50
5/4	62	52	45	32	25.00
6/4	72	57	50	37	25.00
8/4	77	62	55	37	26.00

4/4, narrow: No. 2 and better $39

HARD MAPLE

	F. A. S.	Select	No. 1 common	No. 2 common	No. 3 common	Sound no. 3
4/4	68	53	48	34	22	26
5/4	73	58	48	38	25	31
6/4	78	63	53	40	25	31
7/4	83	68	58	40	26	32
8/4	83	68	58	40	26	32
9/4	98	83	68	43		
10/4	98	83	68	43		
11/4	118	103	83	48		
12/4	118	103	83	48		
16/4	158	143	113			

Miscut, 4/4 no. 2 and better, $36.
1 by 4 inches no. 3, $22.
Beech: F. A. S., $10 less than hard maple select, $5 less than hard maple; no. 1, $5 less than hard maple; no. 2, $2 less than hard maple; no. 3, same as hard maple.

HARD MAPLE—WHEN SOLD NO. 1 AND BETTER

30 percent to 50 percent free alongside	Free alongside	No. 1 and Select
4/4 by 6 inches and wider, 6 feet and longer	$68	$50
5/4 by 6 inches and wider, 6 feet and longer	73	53
6/4 by 6 inches and wider, 6 feet and longer	78	58
8/4 by 6 inches and wider, 6 feet and longer	83	63
10/4 by 6 inches and wider, 6 feet and longer	93	73
12/4 by 6 inches and wider, 6 feet and longer	108	88
16/4 by 6 inches and wider, 6 feet and longer	148	128

The combined grade of No. 1 and Select may be sold at the prices designated above if 6 inches and wider 6 feet and longer.
4/4 and thicker No. 1 and Better Curly, $158.
4/4 and thicker Birdseye, add $25 to upper bracket maple prices for free alongside only.
Heel stock, 6/4 to 10/4, add $10 to No. 1 and better prices.
No. 2 Common and better (log run) may be sold at $2 per M less than No. 1 Common in the same thickness:

1 by 4 inches, 6 to 16 feet, 1 and 2 face $68
5/4 by 4 inches, 6 to 16 feet, 1 and 2 face 73
1 by 5 inches, 6 to 16 feet, 1 and 2 face 73
Add to hard maple prices for straight grained 20
White maple (flat dried) 15
White maple (end dried):
Free alongside 35
No. 1 and Select 25

Price list, Jan. 15, 1935, showing delivered prices at all points in lower peninsula of Michigan, rough-air dried—Continued

HARD MAPLE—FLOORING STOCK

	No. 1	No. 2	No. 3A
4/4, 4 inches and wider, 4 feet and longer, mixed grades	$41	$34	$26
5/4, 4 inches and wider, 4 feet and longer, mixed grades	46	38	31
6/4, 4 inches and wider, 4 feet and longer, mixed grades	----	40	31

HARDWOOD HEARTS—WEIGHT 4,000 POUNDS

	No. 3 common	Crossing plank and structural stock		No. 3 common	Crossing plank and structural stock
2 by 4 inches, 6 to 16 feet	$26	$32	3 by 10 inches, 6 to 16 feet	$32	$38
2 by 6 inches, 6 to 16 feet	26	32	3 by 12 inches, 6 to 16 feet	38	48
2 by 8 inches, 6 to 16 feet	27	32	4 by 4 inches, 6 to 16 feet	28	32
2 by 5 inches and wider, 6 to 16 feet	26	32	4 by 5 inches, 6 to 16 feet	28	33
			4 by 6 inches, 6 to 16 feet	27	32
3 by 3 inches, 6 to 16 feet	28	32	4 by 8 inches, 6 to 16 feet	33	38
3 by 4 inches, 6 to 16 feet	27	32	6 by 6 inches, 6 to 16 feet	28	33
3 by 6 inches, 6 to 16 feet	27	32	6 by 8 inches, 6 to 16 feet	33	38
3 by 8 inches, 6 to 16 feet	29	34	8 by 8 inches, 6 to 16 feet	38	43

8 by 10 inches and larger, prices not less than 8 by 8 inches.
4 to 16 feet (25 to 30 percent 4 and 6 feet) $1 less.
All one length, 8 feet or longer, add $2.
All 10 to 16 feet, add $0.50.
All 12 to 16 feet, add $1.
All 14 to 16 feet, add $1.50.
Sales of 2- to 6-foot lengths may be sold at not less than the established prices for hardwood blocking.
Selected one face sound suitable for flooring add $5 or up according to grade required.
For cutting to length without waste, add $1.

HARDWOOD BLOCKING (NO. 3 COMMON)[1]

	2 feet	3 feet	4 feet	5 feet	6 feet
2 by 3, 2 by 4, 2 by 6 inches	$24	$25	$24	$24	$24
3 by 3, 3 by 4, 3 by 6 inches	24	25	24	25	25
4 by 4, 4 by 5, 4 by 6 inches	24	25	24	25	25
6 by 6, 6 by 8 inches	26	27	26	26	26

[1] For cross cutting add $1 and charge for next even length; 2 to 6 feet mixed lengths $1 less than 6 feet.

HARDWOOD LAGGING D. AND M. OR D. AND M. AND BEVELED AND BUTTED (NO. 3 COMMON)

	4 feet	5, 6, and 7 feet	5 feet 4 inches	4 to 6 feet
6/4 by 6 inches	$24.50	$26.50	$27.50	$24.50
2 by 6 inches	23.50	25.50	26.50	24.50
3 by 6 inches	23.50	26.50	27.50	25.50

HARDWOOD SQUARES (PER M FEET BOARD MEASURE)

	4/4	5/4	6/4	8/4
12 to 24 inches	$43	$48	$53	$58
26 to 40 inches	48	53	58	63
42 to 48 inches	58	63	68	73
54 to 60 inches	73	78	83	83

Price list, Jan. 15, 1935, showing delivered prices at all points in lower peninsula of Michigan, rough-air dried—Continued

SPECIAL INSTRUCTIONS WIDTHS AND LENGTHS. ALL HARDWOODS EXCEPT AS OTHERWISE PROVIDED

5 inches or 6 inches and wider, 8 feet and longer: Nos. 1 and 2 Common, add	$2
10 feet and longer or 12 feet and longer: No. 2 Common, add	2
3 inches and wider, 8 feet and longer: No. 3, add	1
6 inches and wider, 6 feet and longer: No. 3, add	1
6 inches and wider, 8 feet and longer: No. 3, add	2
7 inches and wider, standard lengths: No. 1 and better, add	7
8 inches and wider, standard lengths: No. 1 and better, add	12
9 inches and wider, standard lengths: No. 1 and better, add	25
10 inches and wider, standard lengths: No. 1 and better, add	30
12 inches and wider, standard lengths: No. 1 and better, add	35
11 inches and wider, standard lengths, step plank, add to free alongside price	35
12 inches and wider, standard lengths, step plank, add to free alongside price	40

Lengths all in multiple of one specified length. Add to minimum price the cost of working, including waste.

All one width. Same price as for the same width and wider, except as specifically provided for.

Six feet and shorter, deduct $2 except where otherwise specifically provided for.

COMBINED GRADES, NO. 1 COMMON AND SELECT

Except as otherwise provided: The combined grade of no. 1 Common and Selects may be sold at not less than $2 per M feet more than the established prices for no. 1 common in the respective dimension and species.

MISCUTS, THINNER THAN 1 INCH

Surface measure price is three-fourths of 1 inch price if three-quarter-inch or thicker, and if stock is less than three-quarter inch thick, the surface measure price is five-eighths of the 1-inch price, except as otherwise provided for hard maple, birch, and basswood.

BARKY STRIPS

(All species, same price as no. 3 Common in the same species)

Additions to be made to above list for kiln-dried or millworked stock

Kiln-dried stock (all woods except basswood)			S. 1 or 2 S.	S. 2 S. and R. 1 C.	S. 1 or 2 S. and R. 2 C.	R. 1 C.	R. 2 C.
Size	Add—						
4/4	$5	Birch, hard maple, soft maple, oak, and rock elm—add	$0.50	$1.50	$2.75	$1.00	$2.00
5/4	6						
6/4	6	Soft elm and ash—add	.50	1.50	3.00	.75	2.00
8/4	7	Basswood—add	0	.50	2.00	.50	1.50
10/4	11						
12/4	14						
14/4	19						
16/4	24						

NOTE.—Basswood $1 per M less.

LOWER MICHIGAN DELIVERIES

Prices shown in this list are f. o. b. all points in the lower peninsula of Michigan except in the "thumb territory" where 50 cents per thousand feet should be added. The "thumb territory" is considered to be east of Saginaw. (Jan. 15, 1935.)

Hemlock List

(Subject to change without notice)

(For delivery your station add —)

NO. 1 PIECE STUFF S1S1E OR S4S STANDARD AND EXTRA STANDARD

	6 feet	8 feet	10 feet	12 feet	14 feet	16 feet	18 and 20 feet	22 and 24 feet
2 by 3 and 2 by 4 inches	$28.50	$33.50	$33.50	$33.50	$33.50	$35.00	$37.00	$39.00
2 by 6 inches	28.00	31.50	32.00	33.00	33.00	33.50	37.00	39.00
2 by 8 inches	28.50	33.50	33.50	33.50	33.50	34.50	37.00	39.00
2 by 10 inches	31.00	36.00	37.00	37.00	37.00	38.00	40.00	42.00
2 by 12 inches	32.00	37.00	38.00	38.00	38.00	39.00	40.00	42.00

MERCHANTABLE PIECE STUFF S1S1E OR S4S STANDARD AND EXTRA STANDARD

2 by 3 and 2 by 4 inches	$27.00	$32.00	$32.00	$32.00	$32.00	$33.00	$35.00	$37.00
2 by 6 inches	26.00	31.00	31.00	31.00	31.00	32.00	34.00	36.00
2 by 8 inches	27.00	32.00	32.00	32.00	32.00	33.00	35.00	37.00
2 by 10 inches	29.00	34.00	34.00	34.00	34.00	35.00	37.00	39.00
2 by 12 inches	30.00	35.00	35.00	35.00	35.00	36.00	38.00	40.00

NO. 2 PIECE STUFF S1S1E OR S4S STANDARD AND EXTRA STANDARD

2 by 3 and 2 by 4 inches	$25.50	$30.50	$30.50	$30.50	$30.50	$32.00	$33.00	$35.00
2 by 6 inches	25.00	29.00	29.00	29.00	29.00	29.50	31.00	33.00
2 by 8 inches	25.50	30.00	30.00	30.00	30.00	31.00	32.00	34.00
2 by 10 inches	27.00	32.00	32.00	32.00	32.00	32.00	33.00	35.00
2 by 12 inches	28.00	33.00	33.00	33.00	33.00	33.00	34.00	36.00

NO. 3 PIECE STUFF (FORMERLY SELECT NO. 3) S1S1E OR S4S STANDARD AND EXTRA STANDARD

2 by 3 and 2 by 4 inches	$21.00	$25.50	$25.50	$25.50	$25.50	$26.50	$27.50	----
2 by 6 inches	21.00	24.50	24.50	24.50	24.50	25.50	26.50	----
2 by 8 inches	21.00	25.50	25.50	25.50	25.50	26.50	27.50	----
2 by 10 inches	21.00	25.50	25.50	25.50	25.50	26.50	28.50	----
2 by 12 inches	21.00	25.50	25.50	25.50	25.50	26.50	28.50	----

Note.—Special construction grade, $2 over regular no. 3.

NO. 4 PIECE STUFF S1S1E OR S4S STANDARD AND EXTRA STANDARD

	8 feet	10 feet	12 and 14 feet	16 feet
2 by 3 and 2 by 4	$20.00	$20.00	$20.00	$21.00
2 by 6	19.50	19.50	19.50	20.50
2 by 8	20.00	20.00	20.00	21.00
2 by 10	20.00	20.00	20.00	21.00
2 by 12	20.00	20.00	20.00	21.00

All grades: 7 feet add $1 to 14 feet 9 feet same price as 18 feet.

2-inch Rough, deduct	$0.50	2-inch Resawn rough, add	$0.25
2-inch S1E only, add	.50	2-inch Log Sdg., silo staves, well tubing	3.50
2-inch D and M or Shiplap, add	.75	2-inch Ripped, per cut, add	1.00
2-inch S1S or S2S	.00	2-inch Cut to Length, per cut, add	1.00
2-inch S2S and Res, add	.75		

2 by 4 inches and wider, 4-foot Merchantable, mixed rough, $22. S1 or 2S, $22.50.
2 by 4 inches and wider, 6 foot Merchantable, mixed rough, $25. S1 or 2S, $25.50.
2 by 4 inches and wider, 4 by 6 feet no, 3 and better, deduct $2 per M from Merchantable.
2-inch no. 2 and better takes same price as Merchantable.
2 inch no. 3 and better takes Merchantable price for no. 2 and better with no. 3 priced separately.
2 inch, all widths and all lengths, same price as 2 by 6 inches, 10 to 14 feet.
2 by 2 inches add $1 to price of 2 by 4 inches.

HEMLOCK LIST—Continued

NO. 1 STRIPS AND BOARDS S1S OR S1S1E STANDARD AND EXTRA STANDARD

	6 feet	8 feet	10 feet	12 feet	14 feet	16 feet	8 to 16 feet mixed
1 by 4 inches	$26.50	$31.00	$32.00	$32.00	$32.00	$34.00	$32.00
1 by 6 inches	28.00	32.50	33.50	33.50	33.50	35.00	33.50
1 by 8 inches	29.00	33.50	34.50	34.50	34.50	36.00	34.50
1 by 10 inches	32.50	37.00	38.00	38.00	38.00	39.50	38.00
1 by 12 inches	34.50	39.00	40.00	40.00	40.00	41.50	40.00

MERCHANTABLE STRIPS AND BOARDS S1S OR S1S1E STANDARD AND EXTRA STANDARD

1 by 4 inches	$24.00	$28.50	$29.50	$29.50	$29.50	$31.50	$29.50
1 by 6 inches	25.00	29.50	30.50	30.50	30.50	32.00	30.50
1 by 8 inches	26.50	31.00	32.00	32.00	32.00	33.50	32.00
1 by 10 inches	29.50	34.00	35.00	35.00	35.00	36.50	35.00
by 12 inches	31.50	36.00	37.00	37.00	37.00	38.50	37.00

NO. 2 STRIPS AND BOARDS S1S OR S1S1E STANDARD AND EXTRA STANDARD

1 by 4 inches	$20.50	$24.00	$25.00	$25.00	$25.00	$27.00	$25.00
1 by 6 inches	22.00	26.50	27.50	27.50	27.50	29.00	27.50
1 by 8 inches	23.50	28.00	29.00	29.00	29.00	30.50	29.00
1 by 10 inches	26.50	31.00	32.00	32.00	32.00	33.50	32.00
1 by 12 inches	28.50	33.00	34.00	34.00	34.00	35.50	34.00

NO. 3 STRIPS AND BOARDS (FORMERLY SELECT No. 3), S1S OR S1S1E STANDARD AND EXTRA STANDARD

	6 feet	8 feet	10 feet	12 and 14 feet	16 feet	6 to 16 feet mixed
1 by 4 inches	$19.50	$23.00	$23.00	$23.00	$24.00	$23.00
1 by 6 inches	20.00	23.50	23.50	23.50	24.50	23.50
1 by 8 inches	21.00	24.50	24.50	24.50	25.50	24.50
1 by 10 inches	22.00	24.50	24.50	24.50	25.50	24.50
1 by 12 inches	22.00	24.50	24.50	24.50	25.50	24.50

Special construction grade, $2 over regular no. 3.

NO. 4 STRIPS AND BOARDS S1S OR S1S1E STANDARD AND EXTRA STANDARD

1 by 4 inches	$16.00	$19.00	$19.00	$19.00	$20.00	$19.00
1 by 6 inches	16.50	19.50	19.50	19.50	20.50	19.50
1 by 8 inches	17.50	20.50	20.50	20.50	21.50	20.50
1 by 10 inches	17.50	20.50	20.50	20.50	21.50	20.50
1 by 12 inches	17.50	20.50	20.50	20.50	21.50	20.50

Rough, deduct	$0.25	Ripping, each cut, add	$1.00
D. and M., plain shiplap or S4S, add	.25	Cutting to lengths, each cut, add	1.00
Drop siding, ceiling, fancy shiplap, add	2.75	Bundling, add	1.00
Grooved roofing, add	2.75	Resawn, rough, add	.50
Partition, add	2.75	S2S and resawn, add	.75

Merchantable, 1 by 6 inches and wider, 6 feet and larger, rough, $32.25. S1 or 2S, $32.50.
No. 2, 1 by 6 inches and wider, 6 feet and larger, rough, $29.25. S1 or 2S, $29.50.
No. 3, 1 by 6 inches and wider, 6 feet and larger, rough, $24.25. S1 or 2S, $24.50.
1 by 4 inches and wider, 4-foot merchantable rough, $22. S1 or 2S, $22.50.
1 by 4 inches and wider, 6-foot merchantable rough, $25. S1 or 2S, $25.50.
For 1 by 4 inches and wider, 4- and 6-foot no. 3 and better, deduct $2 per M from merchantable.

SPECIAL DESCRIPTIONS

No. 2 and better, 1-inch or 2-inch takes the Merchantable price.

No. 3 and better, 1-inch and 2-inch takes the Merchantable price for the No. 2 and better, with the No. 3 price separately.

1-inch all widths and all lengths, same as for 1 by 6, 10 to 14 foot.

2-inch all widths and all lengths, same as for 2 by 6, 10 to 14 foot.

Odd width, same price as next wider width.

Odd length, same price as next longer length except 7- and 9-foot piece stuff, 1-inch thin and Miscut, surface measure, price is three-fourths of 1-inch price.

4-inch and wider, and 6-foot and longer, deduct $1 from price of 6-foot and longer.

1 by 2, add $1 to price of 1 by 4.

1 by 3, add $1 to price of 1 by 6.

2 by 2, add $1 to price of 2 by 4.

Shorter than 6-foot, same price as 4-foot lengths.

Mill run 6-foot and shorter shall be sold as Merchantable and No. 3 Common at prices for each grade, 8-foot and longer shall be sold on grade.

Crating: To be sold on grade, except Barky. Barky same price as No. 3 Common.

MERCHANTABLE PLANK AND TIMBERS ROUGH

	10 feet	12 and 14 and 16 feet	18 and 20 feet	22 and 24 feet		10 feet	12 and 14 and 16 feet	18 and 20 feet	22 and 24 feet
3 by 6 and 3 by 8	$40.00	$37.00	$40.00	$42.00	6 by 6 to 8 by 8	$42.00	$39.00	$42.00	$44.00
3 by 10	43.00	40.00	43.00	45.00	4 by 10 to 10 by 10	43.25	40.25	43.25	45.25
3 by 12	44.00	41.00	44.00	46.00	4 by 12 to 12 by 12	44.25	41.25	44.25	46.25
4 by 4 and 4 by 6	40.00	37.00	40.00	42.00					

No. 1 plank and timbers $3 more than Merchantable.
No. 2 plank and timbers $2 less than Merchantable.

3 inch and 4 by 4 to 8 by 8 S1S1E, add	$2.00	4 by 10 to 12 by 12 S1S1E, add	$2.50
3 inch and 4 by 4 to 8 by 8 S4S, add	2.00	4 by 10 to 12 by 12 S4S, add	3.00
3 inch D. and M. or Shiplap, add	2.50	Ripping, per cut, add	1.00

PATENT SHEATHING LATH

Worked from—	No. 1	Merchantable	No. 2	No. 3
4-inch, 4 feet and longer, mixed, bundled	$35.50	$34.00	$32.50	$30.00
6-inch, 4 feet and longer, mixed, bundled	37.50	35.00	33.00	30.50

¾ BY 1½ INCH LATH

48-inch No. 1	$7.00	48-inch No. 3	$4.00
48-inch No. 2	6.00	32-inch mixed	2.30

GRAIN AND COAL DOOR BOARDS—F. O. B. MILL

Grain door boards:		Coal door boards:	
6-foot	$19.00	6-foot	$14.00
7-foot	21.00	7-foot	16.00

WHITE CEDAR SHINGLES—F. O. B. ALL POINTS IN LOWER MICHIGAN

	Per M	Per square
Extra A	$4.50	$3.70
Standard	4.00	3.30
Sound Butt	3.15	2.60

Senator CONNALLY. You say they have a quota on mahogany?

Mr. IRWIN. Yes, sir.

Senator CONNALLY. We do not produce any in America.

Mr. IRWIN. No.

Senator CONNALLY. Why should there be a quota?

Mr. IRWIN. I do not know except to hold the amount of it down.

Senator CONNALLY. Who fixes the quota? The code?

Mr. IRWIN. The code and the Government. They have the authority. The N. R. A. has the authority.

Senator CONNALLY. It is under the N. R. A.?

Mr. IRWIN. Yes sir; it is so stated in the Lumber Code.

Senator CONNALLY. It is not under the tariff act?

Mr. IRWIN. No, sir. Logs come in free under the tariff law. There is no import duty on it. There is no import duty, because it is not supposed to be competitive in this country; yet we fix under N. R. A. a quota, and they have raised the price of mahogany an average of 47 percent.

Senator CONNALLY. The point I am trying to make is that, since it is not to protect any domestic producers in America, a quota can only be for the purpose of making a greater profit for the importers of America, because the less that comes in the higher the price will be.

Mr. IRWIN. I think you are right. That is my suspicion.

Senator CONNALLY. I cannot see any other purpose. If there is a small supply it is going to enhance the price.

Mr. IRWIN. I want to introduce another bit of evidence. On January 17 our company had a proposition on hard maple of $44 a thousand for no. 1 common and selects and $46 a thousand on 6 by 4. There was a meeting of the hardwood lumber men in Chicago on January 15, and on January 18 we got a wire from those lumber men withdrawing the price, and upon looking it up we find the prices were raised during that meeting, and he withdrew his quotation.

Senator COUZENS. Did any of those things ever happen before the code?

Mr. IRWIN. A certain amount of it has always gone on, Senator.

Senator KING. But they did not have the code authority behind them to protect them.

Mr. IRWIN. They were always in fear of prosecution under the Sherman law. Today they are protected.

A statement has been made before this committee that 90 percent of industry wants a continuation of code law and 90 percent of labor. I am not in a position to say as to labor, but I think I can produce some statistics for you in relation to what industry wants, which will show that Mr. Richberg's 90 percent was not very far wrong, but he had it just the wrong way around.

We have recently organized a committee to oppose price fixing in any future law, called the "National Committee for the Elimination of Price Fixing and Production Control". And I would like to, if I may, introduce into the record the platform of this committee, which is very short.

Senator KING. It may be inserted.

(The same is as follows:)

THE PLATFORM OF THE NATIONAL COMMITTEE FOR THE ELIMINATION OF PRICE FIXING AND PRODUCTION CONTROL, ADOPTED AT WASHINGTON, D. C., FEBRUARY 27, 1935

We affirm that the monopolistic power of price-fixing and production control, proffered to industry under N. R. A., is traditionally and economically unsound and dangerous. This is not only doing an injustice to the consumer but is actually retarding recovery.

High costs and prices produced by such means lead to decreased volume of business and employment. Lower costs and lower prices which come from free competition will increase both volume and employment.

Trade practice provisions designed to accomplish price-fixing or production control must inevitably lead to regimentation of business and to the sacrifice of efficiency at the cost of the consumer.

Price control power in the hands of industry today is working a great hardship upon many small industries.

We, therefore, insist that it is in the interest of recovery that there be incorporated, in whatsoever legislation there may be to modify or continue the present National Industrial Recovery Act, an affirmative prohibition against direct price-fixing or production control.

If, in the interest of the public welfare, there is needed any additional legislation governing trade practices, let it be general in character and applied alike to all types of industry.

Mr. IRWIN. I won't take time to read the platform. We have sent out a letter to take a poll of industry. We are making quite a mailing and the returns are just starting to come in, in which we set up the committee's platform which asks for the elimination of these powers.

Senator KING. Do you mean price-fixing?

Mr. IRWIN. Price-fixing and production control and a return to free and open competition, and the poll which is inclosed says, "We approve of the platform of the national committee", or "we disapprove" as the case may be.

Here are the returns to date which have come in since I have been in Washington. We have had 1,618 returns to this card, and 1,340 approve the platform of the committee, and 278 disapprove it. That is, 17 percent have disapproved, and would leave 83 percent did approve.

Senator CONNALLY. Was that sent to all industries?

Mr. IRWIN. That was sent to all industries except natural resources industries. We have taken the names from a standard list. The listing that was used is the listing that is alphabetically arranged, not by industries, so this ought to be even in the first instance a fair test of what industries' opinion is.

Senator CONNALLY. Who compiled that standard list?

Mr. IRWIN. I have forgotten the name, but it is a big one, larger than a Dun or Bradstreet book, that gives over 60,000 names of industries.

Senator CONNALLY. It is a standard list?

Mr. IRWIN. Yes, sir.

Senator KING. Standard statistics?

Mr. IRWIN. Yes, sir.

Senator COUZENS. Have you included merchandisers?

Mr. IRWIN. No, just manufacturers.

The first day we had 419 approvals and 90 disapprovals; the next day 235 approvals, and 57 disapprovals; 479 approvals and 82 disapprovals, and the last day 207 approvals and 49 disapprovals. If you will figure that in the percentage, you will see that the percentage on each day is almost identical with the total.

Senator COUZENS. As a matter of fact then, those cases of price fixing are very much in the minority, are they not, according to that report?

Mr. IRWIN. Yes, sir; as to what industry wants.

Senator COUZENS. If it has been advantageous for them to get together such as they got together in Chicago, and the culvert people and so on, they are very much in the minority.

Mr. IRWIN. This I would say is more largely small industries. I do not think we have had an approval from the steel people or the electrical people or people of that character. I have not gone through the file, but I will wager we have not.

Senator COUZENS. Are you going to study the file to see the size of the industries?

Mr. IRWIN. We will, and we will make a compilation, because on this card we asked for the number of employees and we will make that compilation and be glad to give it to the committee.

There was another poll taken in the South by the Southern States Industrial Council, of which Mr. John Edgerton is president.

Senator KING. When you get your polls complete and any other information, please transmit it to Senator Harrison, the chairman of the committee for insertion in the record.

Mr. IRWIN. I will be very glad to do so.

This poll that was made by the Southern States Industrial Council with a constituency of about 8,000, asked three questions:

1. Are you in favor of the continuation of the National Industrial Recovery Act after June 1935, and if in favor, what modification would you propose. If not in favor say so.

The compilation of those showed that 43 percent wanted it abandoned, 34 percent wanted it modified, and only 22.4 percent wanted it continued in its present form.

If you divide those that want it continued in a modified form, I do not believe the results will be far different from what our poll shows. We center just on the one question—price fixing and production control.

Senator BLACK. You mean that your question was submitted just as to two things, price-fixing and the control of production?

Mr. IRWIN. Yes. We did not touch any other phases of N. R. A.

The National Association of Manufacturers sent out a questionnaire. It was longer than a legal document, and I would say it would take a firm of chartered accountants to figure out what the answer of industry was, and I am here to say that the answer was not given at the big meeting in New York in December. But I got the answer the other day from the chairman of the committee, and that answer was 15 percent wanted it continued, 45 percent wanted it discarded, and 40 percent wanted it modified.

So that when big industry comes here and says that industry in this country wants a continuation of this law, I say that is not in accordance with the facts as we have revealed them, and I think we have a fair test.

I sent out in the first instance on my own initiative, a circular letter out of which grew this organization, and I got about 400 replies to that circular letter which I sent out, and the ratio of those who agreed with what was set up in that letter, and those who were opposed, is almost identical to the vote that is coming in in a larger way today.

Senator KING. Let me ask you a question. Have you found any propaganda being carried on by the N. R. A. or any of the code authorities in favor of the proposition that N. R. A. shall be continued?

Mr. IRWIN. I know of none, directly, Senator.

Now, it is said that we have had some revival of business and that the N. R. A. is to have entire credit for it.

I think that is quite unsound. I think that we must realize that possibly there is still some faith and confidence in our people in the continuity of our institutions, and that possibly some of the forces that dug us out of the other depressions are at work today and possibly have something to do with this increase in business rather than N. R. A.

I say it is unsound if there has been an increase to say that it is due because of the N. R. A., because what has been done this time is not comparable with what had been done in other depressions. We pulled out of the 1893 depression which was the longest one we have had since my time, and after a period of 3 or 4 years. We did not have a "blue eagle"; all we had was the protection of the American eagle, and I say, gentlemen, that that is all that we need today.

I would like to submit to you a paragraph to be incorporated in a new law.

Senator KING. Have you concluded all you want to say with reference to the general proposition?

Mr. IRWIN. I just want to say one more word. I want to warn you against the open-price plan. If I may read this first, and then the other, I will be through.

Our organization of which I have the honor to be chairman suggests that there be incorporated in the new law if there be one, the following, under the prohibitions:

> Or the regulation of production or new or increased capacity; nor shall such code or codes be in aid of price fixing, or permit any form of direct or indirect price fixing, or any open-price plan or other plan of price filing or reporting in advance of at or at the time of any sale, but nothing in this section shall be construed as preventing the publication of price lists not resulting from prohibited concerted agreements or price fixing arrangements.

We ask that there be an affirmative prohibition incorporated in the new law in language which will cover, as we think this language covers.

You will find industry coming and asking for the open-price plan. The open-price plan, as I know from some experience with it, has for its purpose price control or price stabilization, and there is no basic difference between price control, price stabilization, and price-fixing. At the meeting in New York at which I opposed the report of the committee before the National Association of Manufacturers, I made this statement because in this report they asked for the privilege of a publicity of prices, and I made the open challenge that the purpose of that was for price-fixing reasons, and I challenged any man in the audience to get up and say what his purpose was if it was not for price-fixing.

I would like to submit for the record a statement which I have drafted, which outlines quite in detail not only the purposes but the operation of the open-price or publicity-price plan.

Senator KING. It will be received and incorporated in the record.

(The statement is as follows:)

THE PURPOSE AND EFFECT OF THE "OPEN-PRICE PLAN" (OR PUBLICITY OF PRICES)

By ROBERT W. IRWIN, president Robert W. Irwin Co., Grand Rapids, Mich., chairman National Committee for Elimination of Price Fixing and Production Control)

Many lines of industry have, through the powers granted under N. R. A., adopted this very effective plan as a means of price fixing or price control.

Under this plan, if adopted by an industry and incorporated in its code, every unit in that industry is compelled to publicly file prices on all of its products. Prices are usually filed with the industry's code authority and are available to all members of that industry.

The person or concern is at liberty to change prices at will, but the time in which new prices may be made effective varies from immediately to a period of several days. The object of the waiting period, before goods may be sold at changed prices, is that all members of that industry may be advised of the change

and thereby have an opportunity to better meet the competition brought about as a result of these changes.

Under the plan no manufacturer may sell his product at prices or terms under other than those on file with whatever agency is designated for this purpose. To do so would be a violation of the law, and such an act would carry the penalties provided in the N. R. A. statute.

Its proponents claim that its purpose is not price fixing, but rather to stabilize competition and to raise the ethical standards of business. It is supposed to prevent so-called "cut-throat, cannibalistic, ruthless" competition. These are new phrases coined by those who no longer want to do business under the principles of free and open competition, but, on the other hand, want and are obtaining Government support to violate every principle of commerce which was safeguarded under the Sherman antitrust law. Its proponents very softly and smoothly say that all that is asked is that every buyer have an opportunity to purchase at the same price.

Those who further the open-price policy are attempting to justify their position by the argument that the clear marking of prices in the retail trades has helped business ethics tremendously, and that the open-price policy will result in similar benefits by clearly designating the prices at which a manufacturer proposes to sell his goods. This, it is argued, will eliminate many of the unfair-trade practices, and therefore justifies the inclusion of this provision in the N. R. A. and in the codes.

This contention is a pure delusion. There is, of course, no objection to the issuance of catalogs and price lists by business. In fact, in most businesses it is essential that catalogs and price lists be issued. There is no other way of doing business. It is quite another matter, however, to permit the issuance of these catalogs and price lists for interchange with competitors, and then hold the umbrella of law over this practice. In other words, when the Sherman Antitrust and other laws are suspended and this practice affirmatively permitted ex the Sherman Antitrust Law, then obviously the open price policy will flourish as a means and method of price fixing and price control. It is one thing for individual concerns to issue a price list. It is another thing to have a system under which an organized method of interchange of these price lists takes place with time lags for changes, etc., and with the consent of the Government and the waiver of the antitrust laws.

It sounds idealistic to one not familiar with the principles of trade, and the absolute necessity of a continuation of barter which has always been the underlying basis of the exchange in commodities.

Its purpose is not idealistic or in the public interest. Its purpose and effect are to control prices.

It forms and many times is used as an underlying base for a price fixing agreement. It makes violators of one law of those who do not violate the Sherman Antitrust Law.

As an illustration of how this plan works in fixing prices if there is a secret and unrecorded agreement between manufacturers in a certain line:

After having reached the agreement in regard to prices, A, generally the largest concern, will issue the first price list. B, C, D, and others will follow suit. Everything is now set and prices have become stabilized. There can no longer be ruthless, cannibalistic, cutthroat, or cave-man competition, at least not so long as the understanding or agreement continues.

The first man who violates this agreement without notifying all of his competitors has violated a Federal law and is subject to punishment, notwithstanding the fact that by violating one law he is no longer continuing to violate the Sherman Antitrust Law.

The facts are that if the open price plan is honestly adhered to it will greatly intensify competition. What greater factor is there to intensify competition than to always know your competitor's prices? The fact that this is so well known in trade establishes beyond a question of doubt that the purposes of the open price plan is nothing more or less than to bring about price stabilization, another name for price fixing. Even its adherents will admit that this is its purpose, but, as stated before, it does not accomplish that purpose unless there is an underlying agreement, which formerly was prohibited under the Sherman Antitrust Law.

If price fixing is to be tabooed and the principles of free and open competition are to be reestablished, with the Sherman Antitrust Law fully operative, it will be necessary that there be incorporated in any new N. R. A. act not only an affirmative prohibition against price fixing, but also a prohibition which will deny to any branch of industry operating under codes of so-called "fair competition" the right to make mandatory upon all members of that industry the public filing

of prices. If the adoption and use of the open-price plan is to be permitted at all, it should be allowed only as an individual unit's right and not be made mandatory upon all operating within a given industry.

Senator KING. Have you finished?

Mr. IRWIN. I have one more letter that I would like to introduce in reference to price-fixing. It is a letter from the National Rheostat Electric Controller Co. of Chicago. I will put the letter in evidence, but I will only read a paragraph or two if I may. [Reading:]

On January 8, 1935, we bought mica washers at $2.60 per 1,000, or $2.67 delivered, from the Tar Heel Mica Co. of Plumbtree, N. C.; but on January 25, 1935, the price was jumped to $4.55 per 1,000 on the same washers and on double the quantity.

The telegram which was sent to this concern by the Tar Heel Mica Co. of Plumtree, N. C. read: "Code price mica washers four forty-five delivered."

Senator KING. That correspondence may be inserted.

(The same is as follows:)

THE NATIONAL RHEOSTAT,
Chicago, Ill., February 27, 1935.

Mr. ROBERT W. IRWIN,
Washington Hotel, Washington, D. C.

DEAR SIR: I regret my absence from your meeting but I thought maybe I could help a little by showing the effect of the N. R. A. on the price of some material that we purchase.

On January 8, 1935, we bought mica washers at $2.60 per 1,000, or $2.67 delivered, from the Tar Heel Mica Co. of Plumtree, N. C.; but on January 25, 1935, the price was jumped to $4.55 per 1,000 on the same washers and on double the quantity.

These statements are verified by the enclosed documents; the telegram seems to attribute the increase in price to the code.

Such an increase in price must be passed on to the consumer and will have a tendency to reduce the consumption of the goods, and reduce employment. The increased prices also have a tendency to cause labor unrest as the wages will no longer buy as much at the stores.

Yours very truly,

THOMAS RHODUS.

[Western Union Telegram]

PLUMTREE, N. C., *January 25, 1935.*

NATIONAL ELECTRIC CONTROLLER CO.,
5307 Ravenswood Avenue, Chicago, Ill.:

Retail code price mica washers four fifty-five delivered.

TAR HEEL MICA CO.

(Quantity 20,000)

THE TAR HEEL MICA CO.,
Plumtree, N. C., February 1, 1935.

Sold to National Electric Controller Co., 5307 Ravenswood Avenue, Chicago, Ill.; consigned to same; shipped via parcel post; number of cases, 1; gross weight, net weight, 12 pounds; your order no. 7788, dated January 8, 1935.

7,000 mica washers 5/16 by 1/2 by 1/8, at $2.60 per thousand	$18.20
Postage (7 cents per thousand), at $0.07	.49
Total, at $2.67 per thousand	18.69

Senator KING. May I ask you one general question? Have you made an inquiry to determine the increases in prices generally in commodities?

Mr. IRWIN. I have not. I have wished that it was within my power to do so, but it means the expenditure of a little money, and if that character of examination could be made, I think it would be very revealing and show very clearly what I believe is going on under the price-fixing powers of code law, which again I think is greatly retarding recovery in this country.

If I may just add this one thing to my testimony. I am a member of the durable goods committee. They made a report to the President on May 14, 1934. I found it necessary to file a dissenting opinion in connection with that report. It is very short. [Reading:]

I dissent from the committee's conclusion with respect to points 1, 2, and 6. I recommend the elimination of all price-fixing plans and a reinstatement of the antitrust laws. Price-fixing plans have already resulted, as inevitably they must result, in prices higher than those brought about by free and open competition. They produce and have produced price increases faster and farther than the increase in purchasing power. Such plans destroy small enterprises, promote monopolies, and foster the inefficient. Eventually they will reduce the living standard of the Nation. At any rate if price-fixing is countenanced at all it should at least be definitely circumscribed so that no increases are permitted beyond what are required to cover actual advances in sellers' costs because of N. R. A. Otherwise maintaining or increasing the purchasing power of the masses is impossible. Recovery is dependent not on increasing prices but on increasing output. Controlled prices lead to lowered production and thwart recovery.

I made that dissenting opinion a year ago. I got in just ahead of the Darrow report and I still stand by it.

Senator KING. Just one other question. As I understood your opening statement, you are a member of some code organization?

Mr. IRWIN. Yes, sir; I am chairman of the Furniture Manufacturing Code Authority.

Senator KING. Does that organization attempt to enforce upon minority members of the industry, the policies and practices of the majority?

Mr. IRWIN. I do not think it has enforced anything. They have very limited fair-trade practice provisions in the code. We have one for design protection against design piracy. We have set up an impartial tribunal to adjudicate questions of that character.

Senator COUZENS. You said that you are a member of the durable goods committee?

Mr. IRWIN. Yes.

Senator COUZENS. Do you consider the motor industry a durable-goods industry?

Mr. IRWIN. I think it is really classed; yes, it is classed as a "durable goods".

Senator COUZENS. Is that a proper classification? I have always been curious about it.

Mr. IRWIN. Of course there is a line there that is just almost impossible to say scientifically what is durable goods and what is consumers' goods, but the motor car is classed as "durable goods."

Senator MCCARRAN. Mr. Chairman, may I ask a question? I am not a member of the committee.

Senator KING. Proceed, Senator.

Senator MCCARRAN. What industries have at the present time code open price fixing?

Mr. IRWIN. You mean the open-price plan?

Senator MCCARRAN. Yes.

Mr. IRWIN. I have not a list of them. It is easy to furnish it. I think there is a very considerable number of them.

Senator McCARRAN. You have not a list of them with you now?

Mr. IRWIN. No; I have not. I am informed that it is working beneficially in some and detrimentally in others. If honestly carried out, it will intensify competition; there is not any question about that.

They had it in the plumbing codes. Mr. Kohler contended for it in this report. He was a member of the durable goods committee. Within the last month, the plumbing industry, four of them in all under one general code, have thrown out everything from their code except the mandatory provisions in reference to hours. Mr. Kohler told me that their attempt to stabilize prices under this plan had brought about a worse condition in the business and a greater demoralization of business than had ever existed in its history.

There are other industries, on the other hand, where I believe it is working beautifully and I could name a few of them.

Senator KING. You mean where they enforce it to get their prices?

Mr. IRWIN. Yes, sir.

Senator KING. And violate the Sherman Act?

Mr. IRWIN. Of course they are not violating the Sherman Act if it is permitted under N. R. A., and as I say, the Sherman Act has been anesthetized for a couple of years.

Senator McCARRAN. Mr. Chairman, before the committee adjourns, may I make a request that the committee if it is in order and proper, for the enlightenment of the Senate as to what salaries are paid under N. R. A. to those directly connected with the administration of N. R. A. and their employees, and when, if at all, those salaries were changed, be procured?

Senator KING. I have asked for that information and I have part of it. It has been transmitted to me and we will put it all in the record early next week. I am very glad for the suggestion.

The committee will adjourn until Monday morning at 10 o'clock, at which time Mr. Babcock probably will appear, and also Mr. Hettinger.

Mr. IRWIN. Mr. Chairman, I thank you very much for the consideration you have shown me.

Senator KING. If you care to amplify your statement, you may do so and hand the additional material to the clerk of the committee.

Mr. IRWIN. May I do it when I get home?

Senator KING. Yes.

Senator McCARRAN. I wonder if you care to amplify your statement in answer to my question?

Mr. IRWIN. What was your question?

Senator McCARRAN. What codes have the open-price system?

Mr. IRWIN. Very well.

Senator McCARRAN. If it is available to you.

Mr. IRWIN. I am quite sure it is available; I think it is published. I think I can either give you the list or the record.

Senator McCARRAN. Thank you.

(Whereupon at 12:05 p. m., a recess was taken until Monday morning, Apr. 1, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FOURTH CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 79

A RESOLUTION FOR AN INVESTIGATION OF CERTAIN CHARGES CONCERNING THE ADMINISTRATION OF INDUSTRIAL CODES BY THE NATIONAL RECOVERY ADMINISTRATION

PART 4

APRIL 1, 2, 3, AND 4, 1935

Printed for the use of the Committee on Finance



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INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

MONDAY, APRIL 1, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, at 10:05 a. m., in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman) presiding.

Present: Senators Harrison (chairman), George, Barkley, Costigan, Clark, Byrd, Lonergan, Couzens, and Hastings.

The CHAIRMAN. The committee will come to order. Is Mr. Nicholson in the room?

Mr. NICHOLSON. Yes, sir.

STATEMENT OF JOSEPH W. NICHOLSON, PURCHASING AGENT FOR THE CITY OF MILWAUKEE, WIS.

(Duly sworn by the chairman.)

The CHAIRMAN. You are the purchasing agent for the city of Milwaukee?

Mr. NICHOLSON. I am.

The CHAIRMAN. Do you know with reference to this controversy that has come up before the committee, about fire hose for the city of Milwaukee?

Mr. NICHOLSON. I do.

The CHAIRMAN. Will you proceed in your own way and make an explanation?

Mr. NICHOLSON. I am also special representative of the United States Conference of Mayors, an organization consisting of 188 of the largest cities of the country. Not paid though—voluntary.

I am coming before your committee not for the purpose of complaining about something that I have never mentioned or complained about before but I am coming before your committee to reiterate many of the things that I have said at public hearings before the N. R. A.

I have done it on January 9, 1934, before a group of some 4,000 code authorities and trade association of secretaries and the National Industrial Recovery Board. I did it again on the 9th of January 1935 before a similar group, but nothing was done about the complaints.

I have worked with N. R. A. and we have shown them what has transpired under the N. R. A., and we succeeded fortunately in getting the President of the United States to issue an order, known as "No. 6767," which would permit a variation of prices on public bids—that is those who had filed this with the code authority were permitted

to quote from 1 to 15 percent below its filed bids, and it was not necessary for them to file their prices with the code authority until the awarding authority, that is the city, county, State, or Federal official had opened the sealed bids.

The purpose of this order is obvious. On public bidding, generally, the laws require that the award go to the lowest responsible and competent bidder. Where bids are filed with the code authority, the bids are exposed. There is a tendency for bids to become uniform because they are immediately exposed.

These bids, without the existence of the President's order, would be filed with the city official, let us say the public awarding officials. They then would be uniform. There would be no competitive bids, and there would be no protection to you and me as taxpayers in the purchase of commodities, because the bids would all be the same.

The tendency has been to raise the prices exorbitantly. I have evidence to that effect that I would like to file with your honorable committee.

The CHAIRMAN. Yes; it may be filed.

Mr. NICHOLSON. We have specifications which were drawn up by engineers and others who know what they want, and know how to ask for it, and we purchase in very large quantities. I want to present to you this information with reference to municipalities, that is, the organization which I represent, and then specifically I will present information relating to a number of cities regarding the purchase of fire hose, and specifically to a number of purchases made by the city of Milwaukee. So I am not coming before you with general statements but I am presenting specific information such as I have presented before the N. I. R. B. and which is in their files.

We have also presented it to the Federal Trade Commission, and they also have, I believe, made an investigation and will have something to report on it.

Senator CLARK. It was not presented to the Federal Trade Commission until some time after it had been presented to the N. R. A. and no action taken by them?

Mr. NICHOLSON. Yes, sir. I wanted to say that we have our own laboratories for testing materials after they are delivered, and therefore we believe that the specifications on which we ask for bids should be followed by bidders, but we find that the codes have changed all this. They have eliminated many of our requirements which would protect public officials and the taxpayers on public bids, and there has been no reason given for the elimination of these features.

For example, in the purchase of fire hose, we asked for 3 years' guaranty and they wiped that out so that, if we buy fire hose today we have to take the fire hose as they want to submit it to us and make the best of it.

I do not want you to think that I am coming in here to destroy the N. R. A. I want to say that the elimination of child labor and the fixing of reasonable wages and hours are a most commendable accomplishment, and if we could confine the N. R. A. to these activities, there would be no need for strife over these price fixings.

Coming back to the 15-percent order of the President, I have copies of it here if anyone desires to have them. We find that this order has been generally disregarded by bidders. The reason for disregarding it is shown by the evidence submitted herewith.

I have here a letter from Mr. A. D. Kunze, secretary of the Mechanical Divisional Code Authority, dated January 17, 1935. I would like to offer that in the record.

The CHAIRMAN. You may do so.

Mr. NICHOLSON. I would like to quote briefly from the statement which he has made.

Senator CLARK. He is also secretary of the trade association, is he not?

Mr. NICHOLSON. I believe he is. [Reading]:

When Executive Order No. 6767 was issued——

this is the order [indicating]. Does anyone care to have a copy?

The CHAIRMAN. That may be put in the record.

(The Executive order referred to is as follows:)

EXECUTIVE ORDER NO. 6767

Modification of Executive Order No. 6646 of March 14, 1934, etc.

By virtue of and pursuant to the authority vested in me under title I of the National Industrial Recovery Act of June 16, 1935 (ch. 90, 48 Stat. 195) and in order to effectuate the purposes of said title, it is hereby ordered as follows:

1. Any person submitting a bid to any agency or instrumentality of the United States, or any State, municipal, or other public authority, to furnish goods or services at prices which, in accordance with the requirements of one or more approved codes of fair competition, must have been filed, prior to their quotation, with the code authority or other designated agency, shall be held to have complied adequately with the requirements of such code of fair competition: (*a*) If said bidder shall quote a price or prices not more than 15 percent below his price or prices filed in accordance with the requirements of such code or codes; and (*b*) if, after the bids are opened, each bidder quoting a price or prices below his filed price or prices shall immediately file a copy of his bid with the code authority or other appropriate agency with which he is required to file prices.

2. If upon complaint made to the Administrator for Industrial Recovery he shall find, after due investigation, that the tolerance of 15 percent provided in this order is resulting in destructive price cutting in a particular trade or industry, he is hereby authorized to issue an administrative order reducing said tolerance of 15 percent for such trade or industry to the extent he shall find necessary to prevent such destructive price cutting, but in no event to a tolerance of less than 5 percent.

3. The Administrator for Industrial Recovery is directed to cause a study to be made of the effects of this order upon the maintenance of standards of fair competition in sales to public and private customers and to report to the President thereon within 6 months of the date of this order.

4. All prior Executive orders, including Executive Order No. 6646 of March 14, 1934, are hereby modified insofar as, and to such extent as, they may be in conflict or inconsistent with this order.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE.
June 29, 1934.

Mr. NICHOLSON. I wish particularly to call attention to paragraph 1 of that Executive order. That, as you can see, would protect us against collusive bidding. It was intended to protect us.

Senator CLARK. The 15-percent margin would afford bona-fide competition? That is the purpose of the order, is it not?

Mr. NICHOLSON. Yes, sir; to create an area of competition on commodities where prices are filed with the code authority.

Senator CLARK. So that they simply could not get together and make uniform bids?

Mr. NICHOLSON. Yes. Here is Mr. Kunze's statement relative to that order. [Reading]:

When Executive Order No. 6767 was issued, the Mechanical Rubber Division including manufacturers of cotton rubber-lined fire hose recorded its opposition

to the application of the order to prices as filed under our code and a formal request for an exemption from the order was submitted to the National Recovery Administration. Pending the final outcome, in view of the expression of the industry on this question, members of the industry are obligated to conform, to their filed prices in quoting to governmental agencies without regard to the benefit of Executive Order 6767.

Senator HASTINGS. Do you know anything about a study that was made that followed the issue of that order? My understanding is there was called for a report to be made after 6 months of use indicating the results, and that report I think is not in the hands of the committee. It has been suggested by Senator King at one time that it be given to the committee and it has not been done yet.

Mr. NICHOLSON. Mr. Chairman, I know all about that study. I appealed to General Johnson at the time this order was issued to be permitted to work with the Research and Planning Division on this study, and I worked with Leon Henderson and his assistant, Mr. Harry Cantor, and we have submitted—and when I say "we" I mean all of our cities—we have submitted regular monthly reports received by those cities, and Mr. Cantor has had that report and it has been filed with the President, and it illustrates clearly just what we are saying today.

Senator HASTINGS. Whose report was it?

Mr. NICHOLSON. Mr. Harry Cantor. He is the assistant director of the N. R. A. Research and Planning.

Senator HASTINGS. Mr. Chairman, is there somebody here representing the N. R. A.?

Mr. NICHOLSON. Mr. Blackwell Smith.

The CHAIRMAN. I have asked the expert here to try to get us a copy of that.

Mr. NICHOLSON. I believe their attorney could get it for you, Mr. Chairman.

The CHAIRMAN. Mr. Smith, we wish to have a copy of that report, please.

Senator HASTINGS. Mr. Chairman——

The CHAIRMAN (interposing). I understand that Mr. Richberg has written a letter to Senator King explaining in some detail the matter, and Senator King has that letter. That will be put into the record. But we will get the report. I have asked the experts to get it.

Mr. NICHOLSON. Now, Mr. Chairman, I think we can save time if we will dwell on just certain specific cases of collusive bidding and leave out all general statements. I have here in my file a number of letters received from cities, members of our conference. I have already submitted the file from the city of Los Angeles in which Mr. A. J. Holmes, under date of December 12, 1934, has filed a complaint stating that all bids received on 38,000 feet of fire hose, 16 bids in all, were uniform.

The CHAIRMAN. That may go in.

Mr. NICHOLSON. The city of New York rejected identical bids eight times. Dr. Russell Forbes is the city purchasing agent there and he can verify that. The city of Dallas, Tex., 10,800 feet, and all bids were identical since March 1934, signed by B. P. Dypart, city purchasing agent, letter dated February 2, 1935. Do you wish to have me file it in the record?

The CHAIRMAN. Yes.

Mr. NICHOLSON. The city of Oklahoma City, 10,000 feet. He says:

We advertised for 10,000 feet, 68-pound section, wax- and gum-treated fire hose and the first bids were identical, quoting the price on the hose we wanted of $1.40 per foot. I recommended the bids be rejected as I have on practically every occasion when the bids have been identical without any justification as to the merchandise, and upon readvertising prices were dropped to $1.20 per foot, again being identical.

I recommended they be rejected again, which was done and during the week representatives of the various bidders were at my office and seeing that I was demanding the best possible price, finally rebid their merchandise and I was able to buy the hose at $1 per foot.

In other words it was quite evident that if we had accepted the bids as submitted under the protection of the N. R. A. it would have cost the taxpayers of Oklahoma City $4,000 additional for the 10,000 feet of hose.

The city of Detroit. This is signed by Don E. Trumbly, secretary of the department of purchases and supplies, letter dated February 25, 1935, on 20,000 feet of hose.

In June 1933, 9 bids were offered, of which 6 quoted $0.54 per foot; 3 others at $0.95, $1, and $1.20 representing trade brand hose. In May 1934, 11 bids were offered at $0.78 per foot; 4 others ranged from $1.10 to $1.30 per foot for trade brand hose.

I would like to say at this time that the trade brand marked carries a higher price than the specifications hose, because everybody has their own name for their hose, and they can put any price that they want on it, but on our specification hose, that is, the specification of the Board of Fire Underwriters, which practically every city uses in the purchasing of hose, the prices are usually the same.

The CHAIRMAN. Before the adoption of the code, there was a difference in the prices submitted, was there not?

Mr. NICHOLSON. If a city purchasing agent insisted on getting competition, there was a difference. As a rule, the bids came in exactly alike. They came in time and time again in our city at 54 cents per foot, and when we rejected and readvertised, we got the price down to 49 cents, which I understood was a reasonable price for that hose at that time, but if you did not insist on competition you did not get it. There was an apparently tacit understanding among the manufacturers.

The city of Flint, Mich., signed by Ned G. Vermilyea, city clerk, dated March 1, 1935. He states there were five identical bids. He does not give the prices.

The city of Portland, Oreg., signed by Joseph K. Karson, Jr., mayor, dated February 27, 1935. Nine identical bids at 89 cents per foot.

The department of public works, Chicago, O. E. Hewitt, commissioner of public works. On June 5, 1934, 16 identical bids at 80 cents per foot. On June 12, 1934, 12 identical bids at $1.03 per foot, and 1 bid at $1.01 per foot.

The city and county of San Francisco, signed by Leonard S. Leavy, comptroller, dated February 27, 1935, 20,000 feet, 3 identical bids on 2¾-inch hose, at $1.25; 3 identical bids on 3½-inch hose, at $1.60.

The CHAIRMAN. Is there any exception from that in the investigation you made, and others that you have received, or are they all of them of that same tenor?

Mr. NICHOLSON. There is one exception, Mr. Chairman. I have one exhibit here before I come to that exception, and I would like to tell you what happened there.

The CHAIRMAN. Very well.

Mr. NICHOLSON. The city of Cincinnati, Charles E. Lex, Jr., city purchasing agent, June 1934, 10,000 feet, 16 bids identical, at 80 cents. And one higher.

Now we come to the exception. On January 31, 1935, the city of Milwaukee advertised for bids for 13,100 feet of fire hose, and we received a number of telephone calls and a number of letters stating that the price would be the same. Prior to the opening of these bids, the Bi-Lateral Fire Hose Co. wrote a sales letter from which we quote:

We have every reason to believe that the prices will be the same.

To which we replied as follows:

I should like to know what leads you to believe that prices will be the same. If you have reference to the price of 84 cents for 2½-inch with rocker-lug couplings, delivered anywhere in the country, in any quantity, be it 200 feet or 20,000 feet, I should like to refer you to the President's Order No. 6767, which was issued for the purpose of creating an area of competition. You and all other bidders are permitted to bid from 1 to 15 percent below your filed price and there is absolutely no reason why the prices should be the same.

I should like to file his reply to that.

Kindly understand we had to agree on the code prices on our standard brands of hose, including the underwriters, or we would be deprived of our N. R. A Eagle and this would shut us out from bidding.

On January 31 these identical bids were received from 17 bidders at 84 cents per foot on 2½-inch hose; 55 cents on 1½-inch; $1.35 on 3½-inch and $1.66 on 4-inch.

But one bid was 7 percent below the filed price, or what we are pleased to call the trust price. And you can put that word "trust" in quotation marks.

Mr. N. L. Kuehn called me up before this bid was opened and he said, "We represent four different sources of supply. Each one of those sources has told us that we must quote the prices that I have just mentioned to the committee, but I am going to quote according to the President's order." And I said, "If you do we certainly will stand back of you. We want you to do that." I said, "How in the world can you afford to quote according to the President's order? Won't you lose money?"

I just wanted to find out whether this order was fair to him or not. He said, "We are getting two 10's off the list, and this is an over-the-desk transaction. It requires no salesmanship on my part."

He said, "I could handle this order nicely at one 10 off and make money, because all I have to do is to send in my bid; I do not even have to collect the money. My house will collect the money for me."

So he filed a bid on the 2½- at 77.7; on the 1½- at 50.88; on the 3½-inch at $1.2488, and on the 4-inch, $1.5355.

What happened? Here is a telegram from A. D. Kunze, whom I have mentioned before, dated February 1, the following day after those bids were opened.

PURCHASING AGENT,
City of Milwaukee:

Understand N. L. Kuehn quoted below filed prices fire hose. Strongly recommend award be withheld pending our investigation. Wire attitude collect.

A. D. KUNZE.

I suppose he meant to say "pending our intimidation and coercion" so that he won't be able to go through with it and he will withdraw his bid. He asked me to kindly wire our attitude collect, and here is our attitude collect:

FEBRUARY 1, 1935.

A. D. KUNZE,
New York, N. Y.:

Re tel contract awarded Kuehn lowest bidder. Bid conforms to specifications and is 8 percent below filed prices. President's Order 6767 permits as much as 15 percent discount.

JOSEPH W. NICHOLSON,
Purchasing Agent City of Milwaukee, Wis.

Mr. Kuehn has very kindly loaned us his record on this transaction so that we may file it with you gentlemen. The Kuehn Co. received our contract and proceeded to fill it, and they came back in a few days and said, "We cannot get the hose." I said, "Why can't you get it?" "They won't give it to us." "Why won't they?" "Because I quoted below the stated price."

We said, "Well, try somebody else." Se we tried somebody else and came back in about a week and said we could not get it. We said, "Have you tried everybody?" He said, "No." "Well, then, try everybody." He tried everybody and came back and said, "They won't give it to us."

"All right," we said; "Do you have a friend in the fire-hose business in some other State? Can't you get it from him?"

He brought in a letter shortly after this from this friend, and he would not file it with us because it is a confidential letter and this friend said, "I could get you that hose if I signed an affidavit that it was not intended for the city of Milwaukee." Naturally he could not do that, so we did not get the hose.

Senator CLARK. Mr. Nicholson, did you know that Mr. Kunze was both the secretary of the code authority and also the secretary of the trade association and had written to every manufacturer in the United States warning them not to sell to Mr. Kuehn and requiring them to respond in writing that they would not sell to the Kuehn Co., which they did?

Mr. NICHOLSON. Mr. Kuehn told us as much, but I had no evidence.

Senator CLARK. I have had the opportunity to investigate it in the Federal Trade Commission file on that, and that is disclosed in that file.

Mr. NICHOLSON. Now, I have here the correspondence that Kuehn left with us and I will just give you the high spots.

The Acme Rubber Co. letter, dated January 21, 1934, signed J. A. Lambert, vice president, treasurer, and general manager—this was Kuehn's source of supply—and he says:

The city of Milwaukee, Wis., will open bids on the 31st instant to furnish 500 feet 1½-inch, 10,000 feet 2½-inch, 2,500 feet 3½-inch and 100 feet of 4-inch double jacket C. R. L. fire hose, to be coupled with rocker-lug couplings.

We are writing our Chicago store manager, Mr. A. H. Raff, asking him to contact with you immediately looking toward the possibility of your representing us and bidding on this hose.

Then he quotes the prices.

Prices on the hose would be 55 cents for 1½-inch, 84 cents for 2½-inch, $1.35 for 3½-inch, $1.66 for 4-inch, per foot, each size coupled with rocker-lug couplings.

If you should decide to bid it will be necessary to take the following exceptions:

Payment: Exception should be taken to the terms outlined in the city's request. Only standard terms according to code should be extended.
Guarantee: Exception should be taken to the 3-year guarantee, and only standard guarantee as covered by the code should be extended.

We did not want bidders to come in any number of times and say, "We never heard of the President's Order No. 6767; we don't know what it is." So on every bid we sent out one of these notices to every bidder, and we put on the bid "Notice to bidders" at the top, so that they could read it, in big type, so that they could read it even without glasses:

Attention is called to Executive Order No. 6767.

Mr. Lambert's letter continues:

Notice to bidders of fire hose.—Under this caption attention is called to Executive Order No. 6767, as our industry has taken exception to this Executive order and filed a brief at Washington to be exempt therefrom, pending decision on this action. It is deemed advisable to disregard this order and only quote code filed prices.

We gave them a notice in large type calling attention to this Executive order——

Senator BARKLEY (interrupting). That Executive order which permitted 15 percent below filed prices?

Mr. NICHOLSON. From 1 to 15 percent.

Senator BARKLEY. And you advised that that order would——

Mr. NICHOLSON (interrupting). I gave it to you wrong. Here is a statement to the bidders:

We call your attention to notice attached and wish you to bid in accordance therewith.

Senator BARKLEY. I thought you read from your letter that you advised them to disregard this and submit the filed prices?

Mr. NICHOLSON. Yes, I read that—that was an error. What I intended to say was——

Senator BARKLEY (interrupting). Your notice will speak for itself, will it not?

Mr. NICHOLSON. Yes.

Senator BARKLEY. Just read that over again. Perhaps I misunderstood it.

Mr. NICHOLSON. I gave it to you wrong. What I intended to say was that we filed with every bidder a copy of the Executive order and we called attention to this order in large type—

Notice to bidder.—We wish you to bid in accordance with this order which is attached.

The CHAIRMAN. Read what you have in your letter.

Mr. NICHOLSON. Here is a letter from J. A. Lambert——

Senator BARKLEY (interrupting). Read over what you read a moment ago.

Mr. NICHOLSON. I am just coming to that. This is Mr. Lambert, writing to N. L. Kuehn Co., his distributor, and he under—

Notice to bidders of fire hose.—Under this caption attention is called to Executive Order No. 6767 as our industry has taken exception to this Executive order and filed a brief at Washington to be exempt therefrom pending decision on this action. It is deemed advisable to disregard this order and only quote code-filed prices.

Senator CLARK. Mr. Nicholson, that paragraph that you just read was a restatement of a copy of instructions given to Lambert and to the whole trade by Kunze, was it not? That was in the testimony here the other day, in the testimony of Dr. Blaisdell, and I think that that identical instruction was sent out to the whole trade from Washington or Mr. Kunze, the secretary of the code authority?

Mr. NICHOLSON. I was not at the hearing the other day, but this letter that I filed here from Kunze bears it out. Mr. Kunze's letter is as follows [reading]:

When Executive Order 6767 was issued, the mechanical rubber manufacturing industry, including manufacturers of cotton and rubber-lined fire hose, recorded its opposition to the application of the order to prices filed under our code, and a formal request for an exemption or order was submitted to the National Recovery Administration. Pending a final outcome, in view of the expression of the industry on this question, members of the industry are obligated to conform to their filed prices in quoting governmental agencies, without according them the benefit of Executive Order 6767.

Senator CLARK. In other words, what that amounted to, Mr. Nicholson, was this: That the President of the United States had issued Order No. 6767 providing for a margin of 15 percent tolerance to the extent of 15 percent, establishing a zone in which there could be bona fide competition?

Mr. NICHOLSON. Yes.

Senator CLARK. Whereupon the industry came in and filed an application that they be exempted from the operation of Order No. 6767?

Mr. NICHOLSON. Yes.

Senator CLARK. And having filed an application to be exempted from Order 6767, the secretary of the code authority took it upon himself to inform the whole industry that they should not be bound by the President's order?

Mr. NICHOLSON. Exactly.

Senator CLARK. In other words, the secretary of the code authority defying the President of the United States?

Mr. NICHOLSON. Yes, sir; exactly. Here is a letter from the Hamilton Rubber Manufacturing Co., dated January 28, 1935, addressed to Mr. Kuehn. The Hamilton Rubber Manufacturing Co. is also a source of supply of Mr. Kuehn, the local jobber.

Confirming prices given you today, on fire hose for the city of Milwaukee, the following are the prices that you are to quote:

500 feet 1½-inch D. J., 55 cents per foot coupled, net.
10,000 feet 2½-inch D. J., 84 cents per foot coupled, net.
2,500 feet 3½-inch D. J., $1.33 per foot coupled, net.
100 feet 4-inch D. J., $1.66 per foot coupled, net.

Your cost from the Underwriters list price on the hose, uncoupled, will be 10–10 percent, plus the cost of the couplings.

On the 4-inch, base price not coupled, is $1.40 per foot, plus the cost of the couplings.

This quotation must be submitted in line with our terms, which are 2 percent, 10th prox., 60 days net, or a maximum of 1 year, with the interest added at the rate of 6 percent per annum, after 60 days from the date of invoice. Of course, this is out if it is billed to N. L. Kuehn, as you would then carry the account.

Now, regarding guaranty, their specifications call for a 3-year guaranty. This is eliminated under the Rubber Manufacturers' Code, and the quotation must be made under this guaranty, copy of which we are attaching.

Thus were the taxpayers' interests often set aside, and the code requirement prevails.

The letter continues [reading]:

Also, there is a request of exemption in the bid, under Executive Order 6767. The rubber manufacturers do not make any exemptions to municipalities under the Executive order.

Not only speaking for himself, but for all of the rest of them.

Also further [reading]:

It is imperative that the above-named prices be quoted to the city without any deviation, and inform us if anyone files anything differently, immediately.

Senator HASTINGS. Can you tell me—in view of that order issued by the code authority—was it by the secretary?

Mr. NICHOLSON. Yes; A. D. Kunze. I will give you his title, "Secretary, Mechanical Division Code Authority."

Senator HASTINGS. What was the industry to do? Ought it to have followed the Executive order or ought it to have followed the order of this executive secretary?

Mr. NICHOLSON. I cannot answer that.

Senator HASTINGS. What I am interested in is whether they would be guilty of violating their code if they did not follow the order of the executive secretary?

Mr. NICHOLSON. No, sir; they would not be guilty of violating their code, because the Presidential order specifically permits them to vary from that code from 1 to 15 percent.

Senator BARKLEY. You did not get the question. If the President's order was permissive, anybody might vary by 15 percent, but if they refused to vary at all, they still would not be violating the code?

Mr. NICHOLSON. That is true. It was supposed to vary it if they cared to.

Senator CLARK. But if the secretary of the code authority exercised his control over them to instruct them that they should not regard the order of the United States, he was certainly setting his authority at variance with that of the President.

Senator HASTINGS. Senator Clark, what I am interested in is, in view of his order—the order of the executive secretary—whether or not the industry was just then bound to do what he had suggested rather than to do what they were permitted to do under the Executive order.

Senator CLARK. I have stated, Senator, I think before you came in, that I had the opportunity of examining the Federal Trade Commission report in this matter, which will later be gone into in detail. I understand Mr. Babcock of the Federal Trade Commission is to be here. But this shows affirmatively that in the case referred to by Mr. Nicholson, in the city of Milwaukee's awarding a bid to a man named Kuehn, that this man Kunze, the secretary of the trade association and also of the code authority wrote to each manufacturer and required them to write in affirmatively that they would not supply the order to him.

Mr. NICHOLSON. I would like to add this, that there is no reason at all—forgetting all about the President's order—why any bidder cannot file a new price with the code authority every 48 hours.

The CHAIRMAN. I think, Mr. Nicholson, that this committee is thoroughly in accord with your criticism of the proposition. It

seems that here is the code authority that has exceeded its authority in the matter, and when that is found to have been done, it looks to me as if the N. R. A. authorities ought to admit their mistake without question, because the evidence is overpowering to that effect.

Now, proceed.

Mr. NICHOLSON. This is what happened when Kuehn got the order. Naturally, you would expect that he would make delivery and that would be all there is to it. This telegram from the Acme Rubber Co., dated January 30, 1935, is to N. L. Kuehn:

Please remember to take exceptions on fire hose mentioned in our recent letter when bidding tomorrow.

THE ACME RUBBER MANUFACTURING CO.

And a telegram from the same concern sent to N. L. Kuehn Co. of February 2:

Because your disregarding fire-hose price schedule we cannot accept your order unless you revise quotation to schedule.

They followed that up with a letter on the same date, as follows:

Mr. N. L. KUEHN,
President N. L. Kuehn Co., Milwaukee, Wis.

GENTLEMEN: We have advice from the mechanical division, code authority of the Rubber Manufacturers Association that your bids on fire hose as submitted to the city of Milwaukee are not according to price schedules filed under N. R. A. code provision. This compels us to wire you as per copy of telegram enclosed and to the effect that we cannot accept your order unless you revise your quotation to the N. R. A. schedule prices. We would be in violation of the code and subject to penalty provided for such violation. We are sorry that you saw fit to disregard advice as to the prices as it will only lead to trouble and confusion.

Here he puts a halo around his head—

Manufacturers in this line are living up to code price filings and are encouraged thereto by the fact that the Federal Government, many State and municipal governments reject bids lower than N. R. A. code filed prices. As a matter of fact, the Federal Government is enforcing this ruling to the extent that those manufacturers disregarding filed prices are compelled to sign a compliance declaration to the effect that they will thereafter live up to the filed prices. The signing of such a declaration of compliance in connection with a subsequent violation of code price filings releases the Government from seeking any evidence to convict the manufacturer. The signed and sworn to compliance declaration and the open cut-price quotation of filed prices is all that is necessary for conviction.

Every manufacturer of this C. R. L. hose will be questioned and anyone failing to declare that it will refuse accepting this order will have the necessary pressure brought to bear to complete compliance with the demand of the code authority.

If that is not coercion and intimidation, I do not know what it is.

Senator CLARK. Who is that letter signed by?

Mr. NICHOLSON. J. A. Lambert, vice president, treasurer, and general manager of the Acme Rubber Manufacturing Co.

Senator BARKLEY. Did he have any official connection with the code authority or the N. R. A.?

Mr. NICHOLSON. I do not know.

Senator BARKLEY. Or writing in his capacity, as an officer of this company?

Mr. NICHOLSON. I do not know. I do not have a list.

Here is another letter from Mr. Lambert, dated February 4. I will just read the salient points here so as not to take up any more of the time of the committee than is necessary. [Reading:]

There isn't any way in which to avoid publicity such as you think it is possible to escape. The name of one manufacturer is now tied up with yours as your probable source of supply. This manufacturer will endeavor to persuade you to cancel your bid. In failing to do so will report to the code authority accordingly. Already all members of our code have been notified of your bidding under schedule and each manufacturer has been asked to keep this information in mind and refuse to accept any contract corresponding with the Milwaukee bid. You will therefore see our hands are tied and that if we were to accept the business we would not have to broadcast the fact for every other manufacturer in the line to know about it.

The city of Milwaukee isn't quite as big as the city of New York and it will be no more successful than the city of New York in the fight it is now undertaking. Federal Government itself is sustaining filed prices. It cannot do otherwise without leaving itself open to being considered an enemy to N. R. A.

There is no legitimate reason for the attitude of the city of Milwaukee in this matter. On the contrary, the filing of uniform prices means that the smaller city will be able to buy at the same price as the larger city. This is nothing more than justice.

I would like to put in an aside here. You must understand that the price is the same, as our survey has shown, the country over, irrespective of quantity, irrespective of where it comes from or whether you can pay cash or not, if it is 200 feet or 500,000 feet. And if the manufacturer is right next door, the price is the same. You go down to the little city of Podunk and sell them 200 feet, and you sell it at the same price.

Senator COUZENS. Do you object to it?

Mr. NICHOLSON. I do. I think it is entirely unfair.

Senator COUZENS. In other words, the little fellow must pay more than the big fellow?

Mr. NICHOLSON. Exactly, on the basis of the quantity of purchase.

Senator COUZENS. I do not subscribe to any such theory as that.

Mr. NICHOLSON. It may take a salesman 2 weeks to sell the town of Podunk, and it takes him no time at all to sell the city of New York. He puts a 3-cent stamp on an envelop and puts the bid in. He does not waste any time trying to sell. [Reading:]

You do not think for a minute any manufacturer in our line would help the city of Milwaukee in the effort it is making nor make it possible for the city of Milwaukee to buy the same kind of hose as other cities at a lower price? Milwaukee is showing a very bad example and which it cannot successfully execute. We cannot assist the city of Milwaukee in its efforts to break down the N. R. A.

In other words, when the President issued that order, he did it to break down the N. R. A.? That is silly.

The order which you gave our Mr. Raff coincides exactly with the specifications calling for bids by the city of Milwaukee and it would be entirely useless for us to think we could defend ourselves in accepting this business when the reason for placing this order is so plainly evident. Foreseeing the possibility of some kind of trouble or mix-up explains why we did not accept the order on being received here.

I am very sorry that I cannot see any possible way out of this mix-up except for you to withdraw your bid and endeavor to assure your success as a bidder on the next opening in some manner which will not be in violation of our code 156.

That means by hook or crook.

Senator CLARK. How could he insure that if it is the same price?

Mr. NICHOLSON. That means by hook or crook. There was one fellow called up and he would not give his name and he said, "Don't you have a firemen's pension fund or something that we can contribute to?" I could not get his name.

Senator CLARK. In other words, some secretary to a code authority suggested by the manufacturer that this man would secure the business even if all the bids were the same price?

Senator HASTINGS. Is Executive Order No. 6767 still in effect?

Mr. NICHOLSON. Yes.

The CHAIRMAN. Have you some more data there that you want to put in the record?

Mr. NICHOLSON. Yes.

The CHAIRMAN. The committee understands this pretty well now.

Mr. NICHOLSON. If you will give me 3 minutes, I will summarize this.

I have a letter from the Fabric Fire Hose Co., dated the same day, March 4, in which he says:

DEAR MR. NICHOLSON:

they would like to cut my throat—

We have been informed that the successful bidder on fire hose was unable to deliver the hose at the price quoted.

That was before Kuehn said that he could not deliver it. How did he find that out?

We will appreciate it very much if you will advise us if you are going to advertise for the bids again or if you are going to place the order elsewhere.

Thanking you in advance for this information and with kindest personal regards, I remain,

So Kuehn could not deliver the hose, and finally established it to me that we were licked, and we took new bids on March 28, 1935. The bids were all identical, and they were all according to the so-called "trust" price of 55 cents for the 1½-inch; 84 cents for the 2½-inch; $1.35 for the 3½-inch, and $1.66 for the 4-inch.

Everyone was identical, including Kuehn. We asked Kuehn, "Why is the price that way?", and he said, "If I quote lower, I won't get the hose. I would like to get part of that business."

They also threatened to raise the price effective April 1 in spite of the recent drastic reduction in the cost of cotton and rubber, and the purchase by Milwaukee was made at that cost, because they had to have the hose. The order was placed on the 29th of March. Half of it went to the Bi-Lateral Co. and the other half went to Kuehn.

That is all for fire hose.

Now I would like to file another bit of evidence with you if you have no objection.

On February 7, 1935, we received bids on large gate valves. These bids were all identical, and they were from 50 percent or 100 percent higher than they were on previous bids. There are six bidders. For example, the 36-inch valve in June 1932 was $600, and on February 7 was $1,231.40, and all the bids were exactly alike.

Naturally, we rejected the bids, and on March 7 we received new bids, and they were again identical, and the same as the previous bids, and we called these men in and asked them why there was no variation and why it was so much over the previous prices, and they had nothing to say; they would give no explanation.

We asked one fellow, "Why don't you follow the President's order?" He said, "I cannot discuss the order." "Why can't you?" He said, "I suppose I should have said, 'I won't discuss it.'" So we had to let it go at that.

Those bids were rejected. On March 29 I was instructed to take informal bids and see whether I could do any better without advertising, and the same people quoted the same prices with no exception at all, and a "take it or leave it" attitude.

I would like to file that with your commiteee.

We had to have some of these valves, and so we bought them, paying from 50 percent to 100 percent more than we paid previously.

I have still more data here that I would like to submit.

We have here on December 20, 1933, 11 identical bids on pipe fittings, all quoted exacly the same price, $1,907.84.

On December 22, 1933, five identical bids on fiber conduit and couplings which were quoted 52.03 cents per foot.

On December 21, 1933, five identical prices on reinforcing steel. On December 19, 1933, eight identical prices on reinforcing steel.

On February 6, 1934, six identical prices on blueprint paper contract for a 3-month period.

The CHAIRMAN. Was there any exception in the bids on any of these articles?

Mr. NICHOLSON. No, sir; those are the only ones I am filing with you. Just the identical ones.

The CHAIRMAN. You say there were eight bids and all the same. Were they all the bids that were filed, and all of the bids that were filed were the same?

Mr. NICHOLSON. Yes. I just checked off in this list the two that were the same. In the others there were variations.

On April 6, 1934, four identical bids on ready-mixed concrete.

On February 2, 1935, 5 identical bids on tile, and 5 identical bids on high low-set cement.

On February 28, steel plates for peddlers' wagons, four identical bids.

The CHAIRMAN. Put all of them in the record, Mr. Nicholson.

Mr. NICHOLSON. In closing, Mr. Chairman, I want to thank the committee for their attention, and I want to say this, that I have been in contact with private purchasing agents who have informed me that I am paying more than they are paying, but they cannot give their prices because it is against the policy of their companies to give those prices.

They say there is more chiseling going on under the N. R. A. in the matter of prices than there was before the N. R. A.

I tried to supply Mr. Blackwell Smith with that evidence, and asked for copies of the letters which I received from the industries, stating that they cannot give out prices that are private. But in our

case, our prices are open and anyone can see them at any time, and that is where the price-fixing is being enforced.

I thank you.

The CHAIRMAN. Thank you very much.

Senator HASTINGS. Mr. Nicholson, what do you know about this report that was made? I think you said you knew all about it.

Mr. NICHOLSON. Yes; I thought I did.

Senator HASTINGS. What was the nature of the report?

Mr. NICHOLSON. It was supposed to show the effect of the President's order upon public bids, and that there was also another object to show the effect on the manufacturer, but I shall not go into that. I was to go into the matter of the effect of public bids, and in doing that I filed with Mr. Cantor the reports every month showing exactly what prices were received, and with the material submitted by Mr. Cantor himself, all of this evidence was submitted to the President.

Senator HASTINGS. That report will show all of these things?

Mr. NICHOLSON. Yes; from every city of any consequence in the country.

Senator BARKLEY. What report is that?

Mr. NICHOLSON. That is the report of the Research and Planning, it is called for, under this Executive order of the President. It was supposed to have been made within 6 months after the date of this order.

Senator BARKLEY. To whom was the report made?

Mr. NICHOLSON. To the President.

Senator BARKLEY. By whom?

Mr. NICHOLSON. By Leon Henderson of the Research and Planning Division.

The CHAIRMAN. We have called for that report.

Thank you, Mr. Nicholson.

We will now call Mr. Babcock.

Senator HASTINGS. Has this Executive order been put in the record, Mr. Chairman?

The CHAIRMAN. Yes; that has been put in the record.

(The following matter was submitted in connection with Mr. Nicholson's testimony:)

EXECUTIVE ORDER No. 6767

MODIFICATION OF EXECUTIVE ORDER NO. 6646 OF MARCH 14, 1934, ETC.

By virtue of and pursuant to the authority vested in me under title I of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195) and in order to effectuate the purposes of said title, it is hereby ordered as follows:

1. Any person submitting a bid to any agency or instrumentality of the United States, or any State, municipal, or other public authority, to furnish goods or services at prices which, in accordance with the requirements of one or more approved codes of fair competition, must have been filed, prior to their quotation, with the code authority, or other designated agency, shall be held to have complied adequately with the requirements of such code of fair competition: (a) If said bidder shall quote a price or prices not more than 15 percent below his price or prices filed in accordance with the requirements of such code or codes: and (b) if, after the bids are opened, each bidder quoting a price or prices below his filed price or prices shall immediately file a copy of his bid with the code authority or other appropriate agency with which he is required to file prices.

2. If upon complaint made to the Administrator for Industrial Recovery, he shall find, after due investigation, that the tolerance of 15 percent provided in this order is resulting in destructive price cutting in a particular trade or industry, he is hereby authorized to issue an administrative order reducing said tolerance of 15 percent for such trade or industry to the extent he shall find necessary to prevent such destructive price cutting, but in no event to a tolerance of less than 5 percent.

3. The Administrator for Industrial Recovery is directed to cause a study to be made of the effects of this order upon the maintenance of standards of fair competition in sales to public and private customers and to report to the President thereon within 6 months of the date of this order.

4. All prior Executive orders, including Executor Order No. 6646, of March 14, 1934, are hereby modified insofar as, and to such extent, as they may be in conflict or inconsistent with this order.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
June 29, 1934.

THE RUBBER MANUFACTURERS ASSOCIATION, INC.,
New York City, January 17, 1935.

Fire hose, city of Los Angeles.

Mr. A. J. HOLM,
Purchasing Agent, city of Los Angeles,
Department of Supplies, Los Angeles, Calif.

DEAR SIR: Kindly refer to your letter of December 12, 1934, addressed to Mr. W. Gussenhoven, of the United States Rubber Co., 1790 Broadway, New York City, in his capacity as chairman of the cotton rubber-lined and specification hose subdivision, operating under code no. 156, chapter VII (mechanical division).

Mr. Gussenhoven has sent us a copy of his response of December 24, 1934, addressed to you, and referred the correspondence to this office for the attention of the Mechanical Divisional Code Authority, Mr. Gussenhoven pointing out to you that he is without power to permit or not permit fire-hose manufacturers to accord to the city of Los Angeles the benefit of Executive Order No. 6767.

The Mechanical Divisional Code Authority feels that an explanation is due you regarding the attitude of our industry with respect to Executive Order No. 6767. As you know, that order permits manufacturers operating under N. R. A. codes of fair competition to quote governmental agencies not more than 15 percent below prices filed by them pursuant to such codes.

When Executive Order No. 6767 was issued, the mechanical rubber manufacturing industry, including manufacturers of cotton rubber-lined fire hose, recorded its opposition to the application of the order to prices filed under our code and a formal request for an exemption from the order was submitted to the National Recovery Administration. Pending the final outcome, in view of the expression of the industry on this question, members of the industry are obligated to conform to their filed prices in quoting governmental agencies without according them the benefit of Executive Order No. 6767.

The basic reason for the attitude taken by the mechanical rubber goods manufacturing industry on this matter is the conviction that the application of Executive Order No. 6767 would lead to destructive price cutting in the form of successive reductions in prices culminating in a condition where sales would be made below cost, which the National Industrial Recovery Act was intended to correct.

Another fundamental reason for the belief of the industry that the order should not be applied to mechanical rubber goods is because, with respect to at least some products, prices to governmental agencies are already on the general level of cost and any further reductions would bring them below cost. Generally speaking, prices accorded governmental agencies as filed with this office are as low as those offered any other class of trade including resale outlets, and, while this condition may not pertain in all cases to the purchase of fire hose by the city of Los Angeles, it is a very important factor in the industry's consideration of the problem.

The foregoing is offered solely as an explanation and a fair statement of the situation in response to the very liberal attitude expressed in your letter of December 12, 1934, addressed to Mr. Gussenhoven.

Yours very truly,

A. D. KUNZE,
Secretary, Mechanical Divisional Code Authority.

CITY OF LOS ANGELES,
DEPARTMENT OF SUPPLIES,
February 25, 1935.

UNITED STATES CONFERENCE OF MAYORS,
Washington, D. C.
(Attention of Mr. Joseph W. Nicholson, Secretary.)

GENTLEMEN: Thank you for your interest in our fire-hose problem as evidenced by your telegram of February 23.

The city of Los Angeles first received bids on fire hose on December 4, 1934. The prices quoted by all firms were identical and were 54 cents per foot for 1½-inch hose, and 82 cents per foot for 2½-inch hose, including couplings.

The following bidders submitted quotations: American LaFrance and Foamite Corporation, Petroleum Equipment Co.[1], Eureka Fire Hose Co.[1], Pacific Fire Extinguisher Co. (Goodrich)[1], B. F. Goodrich Co., Los Angeles Rubber and Asbestos Co. (American Rubber Manufacturing)[1], Mechanical Products Co.[1], Fabric Fire Hose Co., Bi-Lateral Hose Co., Goddard Jackson Co.[1], Goodyear Tire & Rubber Co., W. C. Hendrie [1], Pioneer Rubber Mills, Boston Woven Hose Rubber Co., Plant Rubber & Asbestos Co. (Manhattan)[1], Christie-Frey Co.[1]

These bids were rejected at the time of opening and new bids were called for on January 23, 1935. The same group of bidders, with the exception of the Bi-Lateral Hose Co., again submitted identically the same prices as on the previous bids.

In view of the fact that there is a very apparent control of prices, we have not rejected these bids as yet, but have bought approximately 6,000 feet of 2½-inch hose to take care of our immediate requirements on small bids, with amounts less than $2,000 each.

I have written to the Rubber Manufacturers Association in New York as per attached correspondence, but with little satisfaction.

I have also tried to obtain bids from Canadian manufacturers but find that while the price quoted is within reason considering cost, the duty imposed by the Federal Government eliminates foreign competition.

There is no question in my mind in view of results but that the Rubber Manufacturers Association controls the group with an iron hand.

The city of Los Angeles will not place a large order under the conditions existing at the present time. The quantities called for in both of the bids mentioned herein, were 14,000 feet of 1½-inch double-jacket hose, and 38,000 feet of 2½-inch double-jacket hose. On the last set of bids, I requested an option to double the quantity thinking that possibly an increased quantity might break down the price structure.

We buy our hose on our own specifications which fulfill the minimum requirements of the underwriters' laboratory.

I will appreciate anything that you can do to help me in this situation because I am determined to get fair prices, and in my opinion, a fair price does not cosist of one price to all consumers regardless of the amount purchased.

I have been informed by many representatives that they will be glad to get all the hose orders possible at 70 cents a foot on the 2½-inch size. If the Rubber Manufacturers Association would extend the 15 percent discount allowed by the President in Executive Order No. 6767, the price would be brought down to approximately 70 cents a foot and I would be satisfied.

Respectfully yours,

A. J. HOLM, *Purchasing Agent.*

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[1] Indicates local jobber.

CITY OF LOS ANGELES, DEPARTMENT OF SUPPLIES,
Los Angeles, January 24, 1935.

A. D. KUNZE,
Secretary Rubber Manufacturers Association, Inc.,
New York City.

DEAR SIR: Thank you for your courteous letter of January 17, in which you state the reasons why the city of Los Angeles cannot possibly be given the 15-percent discount in prices as permitted by the President.

I firmly believe that you do not expect me to agree with the reasons given, for the reason that common logic refutes the statements made.

I acknowledge the power and authority of the association to maintain prices. This acknowledgment is based on the results of bidding throughout the entire country, including such requests for bids as call for large quantities of hose. In almost all cases the group of manufacturers and agents has held together. The very fact that the association can hold the manufacturers and agents together eliminates the danger of destructive price cutting referred to in your letter.

One of the first requirements to accomplish anything is the keen desire to do so. I know that if the Rubber Manufacturers Association wanted to establish a fair price based on quantity they could do so and could maintain it just as they are maintaining the price level at the present time.

I also believe that it would be only fair to have an arrangement made whereby consumers buying fire hose in carload lots or more, and taking delivery of such fire hose at one time, should be quoted a price taking into consideration the savings effected by the manufacturer by reason of such quantity.

Executive Order No. 6767 may not be the solution, but there is nothing to prevent the filing of price differentials for quantity purchases such as we find prevailing in most other commodities.

Yesterday, I again received bids covering the furnishing of our annual requirements of fire hose. One of the conditions contained in my specifications was to the effect that if the 15-percent discount was not given to us, the city of Los Angeles reserved the right to purchase in small quantities of not less than 1,000 feet, and over a period of time of not greater than 1 year.

If we cannot expect fair treatment from the manufacturers of fire hose, we can at least make them work for the business to such an extent that the margin of profit will not be much larger than in such cases as when they sell to a small account, purchasing a thousand feet. It is not our desire to do so for the reason that both the manufacturer and the city of Los Angeles lose by this procedure. However, under the arbitrary conditions set up by the association, it seems to be the only feasible procedure to follow.

I have talked to many agents of manufacturers in Los Angeles and with few exceptions they have told me that if they could possibly get this order they would make from 50 to 60 percent more profit on this sale than were they to sell an equivalent quantity in dollars and cents of any other item that they handle.

Naturally, with such a picture in mind, I feel very strongly against the arbitrary, high-handed attitude shown by the manufacturers of this product.

Very truly yours,

(Signed) A. J. HOLM,
Purchasing Agent.

CITY OF LOS ANGELES,
DEPARTMENT OF SUPPLIES,
Los Angeles, December 12, 1934.

WALTER GUSSENHOVEN,
Chairman Cotton Rubber Lined Fire Hose Division,
New York, N. Y.

DEAR SIR: In the very near future, I believe that N. S. Dodge of the American Rubber Manufacturing Co. will appear before you to discuss certain matters among which will be a plea to be permitted to quote lower prices on fire hose to the city of Los Angeles. I feel that you should also personally know my attitude in the matter, an attitude that I have been led to believe has the sympathetic support of a large number of the firms that submitted quotations on our last request for bids.

I want to be fair, and I want to conform to those good principles of business that have been proven to be sound through long years of usage. I am not a "chisler" and I am not interested in "chiseling." If there is one thing that history brings out in strong relief, it is that those principles, which are fair and sound, will endure; the others will pass out in time.

I believe in, and am wholeheartedly supporting the President's program as embodied in the National Recovery Act. I am not fighting it in this instance because he has provided for what I am asking in Executive Order No. 6767; rather, I am making a suggestion to the worthy organization which you represent to consider a sound principle. Volume purchases have always commanded a better price than small-lot purchases.

In our case, we have already bought approximately $45,000 worth of hose this year. The prices were higher than at any time in the past, even including the boom years of high prices; but, considering the industrial recovery problems, they were fair. If we are granted the 15 percent allowed by the President, we will spend an additional $40,000 for hose; otherwise we will buy only when necessity forces us to do so and then only in small quantities, since the prices would be the same.

In your own mind, does it seem fair and sound that an organization buying almost $100,000 worth of hose per year should pay the same price as an organization buying $100 worth? I feel certain that the problem can be worked out if we are both willing to be fair to the other party.

The President has provided the means. Let's work together for the best interests of all concerned—82 cents per foot on 2½-inch hose and 54 cents per foot for 1½-inch hose, both less 15 percent, will be a step in the right direction.

I will appreciate hearing your views on this matter.

Respectfully yours,

(Signed) A. J. HOLM, *Purchasing Agent.*

UNITED STATES RUBBER PRODUCTS, INC.,
New York, December 24, 1934.

MR. A. J. HOLM,
Purchasing Agent, City of Los Angeles,
Los Angeles, Calif.

DEAR MR. HOLM: Referring to yours of December 12, I have not seen or heard from Mr. N. S. Dodge of the American Rubber Manufacturing Co.

However, for anyone to appeal to me for permission to quote lower prices on fire hose would be most rediculous, as I certainly have no jurisdiction over prices filed and quoted by other manufacturers. Likewise, if any other manufacturer wishes to take advantage of Executive Order No. 6767, I presume it is their own business, although I understand that the Mechanical Divisional Code Authority (Code 156, ch. 7), at the instance of the industry, has asked Washington for an exemption from Executive Order No. 6767. Under the circumstances, I am referring your letter to the code authority.

I can assure you that any prices my company has quoted you on your fire hose are fully justified by our present-day costs.

Trusting I have made my position clear in this matter, I am,

Respectfully yours,

W. GUSSENHOVEN,
Assistant to Vice President.

CITY OF DALLAS,
Dallas, Tex., February 23, 1935.

MR. PAUL V. BETTERS,
Executive Director, U. S. Conference of Mayors, Chicago, Ill.

DEAR SIR: The experience of the city of Dallas in the purchase of fire hose, as requested in your letter of February 20 to Mr. Edy, is outlined below. I am also attaching a tabulation of the latest bids that we received.

1. All bids have been identical since March 1934.
2. Prices are approximately 25 to 50 percent higher since identical bids have been received.

3. Identical bids are the only ones we have received during the past few months.

Our experience in the purchase of fire hose during the past few months has indicated to us that there is a very strong combination controlling the prices. Our city council has authorized us to purchase in the open market, and we have been able to buy on several occasions at prices as much as 10-percent lower than the formal quotations. This procedure, however, leads to much dissatisfaction and criticism.

Very truly yours,

B. P. DYSART,
City Purchasing Agent.

10,800 feet, 2½-inch fire hose, 2-ply jacket or better, Underwriters' specifications or better	Manhattan Rubber Manufacturing Co.	Dallas Belting Co.	Fabric Fire Hose Co.	Hewitt Rubber Corporation	Republic Rubber Co. (Huey & Philp)	American Rubber Manufacturing Co.	Eureka Rubber Industries	American-La France & Foamite Industries, Inc.	Continental Supply Co.	Briggs-Weaver Machinery Co.	Sowden Sales Co.	Ohio Supply Co.	Murray Co.	Pioneer Rubber Mills	Walter Kidde & Co.	Walter Kidde	Walter Kidde	Bi-Lateral Fire Hose Co. (Ware Rubber Co.)	Quaker City.	Acme Rubber Manufacturing Co.	Viking Supply Co.
White, coupled, in 50-foot sections with rocker lug couplings	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.84	$0.793	$0.84	$0.84	$0.92	$0.80	$0.84	$1.30 1.25 1.20 .99 .84	$0.84 1.00	$0.84	$0.84
White, uncoupled, in 50-foot sections	.74	.74	.74	.74	.74	.74	.74	.74	.74	.74	.74	.693	.74	.74	.86	.745	.74	------	.81 .91	.74	.74
Wax- or gum-treated, coupled in 50-foot sections with rocker lug couplings	.89	.89	.89	.89	.89	.89	.89	.89	.99	.89	.89	.843	.89	------	.93	.81	.89	------	.89 1.10	.92	.89
Wax- or gum-treated, uncoupled in 50-foot sections	.79	.79	.79	.79	.79	.79	.79	.79	.89	.79	.79	.743	.84	------	.87	.76	.79	------	.86 1.01	.82	.79

NOTE.—All bids that did not conform to the code bid were either withdrawn or the hose did not meet our specifications.

CITY OF FLINT,
Flint, Mich., March 1, 1935.

Mr. PAUL V. BETTERS,
Executive Director United States Conference of Mayors,
Chicago, Ill.

DEAR SIR: Your communication directed to Mr. J. M. Barringer, our city manager, with reference to fire-hose purchases has been referred to the writer.

The city of Flint has received prices only once within the last 2 years on fire hose. Bids were received from five sources of supply. All quotations were identical, and on checking with bids received from other cities, I find the city of Flint received quotations based according to the price agreement evidently entered into by fire hose manufacturers.

Very truly yours,

NED J. VERMILYA, *City Clerk.*

CITY OF PORTLAND,
Portland, Oreg., February 27, 1935.

Mr. PAUL V. BETTERS,
Executive Director United States Conference of Mayors, Chicago, Ill.

DEAR MR. BETTERS: In response to your letter of February 20, this is to inform you that December 12, 1934, bids were opened for furnishing 2½-inch double jacket wax-and-gum-treated fire hose with couplings.

Nine bids were received, seven of the bidders submitting bids on Underwriters' grade of hose, all of which were identical, at 89 cents per foot. Other bids were for the standard brands of the various companies in the higher grades of hose. None of the bids offered any price advantage whether the purchase were for a foot or a carload.

While Executive Order No. 6767 of June 29, 1934, signed by President Roosevelt, grants any needed authority for competitive bidding and reduction in prices, there has been no deviation from regular prices.

If we can be of further help, please inform us.

Yours very truly,

JOSEPH K. CARSON, Jr., *Mayor.*

DEPARTMENT OF PUBLIC WORKS,
Chicago, February 26, 1935.

Mr. PAUL V. BETTERS,
Executive Director, United States Conference of Mayors,
Chicago, Ill.

DEAR SIR: In answer to your letter dated February 20, 1935, regarding fire hose purchases, please be informed that bids were opened for 2½-inch fire hose on June 5, 1934. Sixteen bids were received, all of which were equal, namely, 80 cents per foot.

Bids were also received for 3-inch fire hose on June 12, 1934, of which 12 bids were equal at $1.03 per foot, and 1 bid submitted at $1.01 per foot.

Yours very truly,

O. E. HEWITT,
Commissioner of Public Works.

CITY AND COUNTY OF SAN FRANCISCO,
February 27, 1935.

Mr. PAUL V. BETTERS,
Executive Director, United States Conference of Mayors,
Washington, D. C.

Subject: Bids, fire hose.

DEAR MR. BETTERS: In answer to your letter of February 20, re the above subject matter, please be informed that only one bid was received for fire hose during 1934 and all such bids were identical in price.

Three bids were received for 20,000 feet of 2¾-inch cotton rubber-lined fire hose at $1.25 a foot. Three bids were also received for 4,000 feet of 3½-inch cotton rubber-lined fire hose, and the identical price was $1.60 a foot.

Yours very truly,

LEONARD S. LEAVY, *Controller.*

CITY OF CINCINNATI,
Cincinnati, Ohio, February 21, 1935.

UNITED STATES CONFERENCE OF MAYORS,
Washington, D. C.

GENTLEMEN: This morning I received a letter from Mr. Paul V. Betters, executive director of your conference, asking that we immediately send to your Washington office our city's experience in the matter of taking bids for contemplated fire-hose purchases. This I am very glad to do and I think the computation sheets themselves will be self-explanatory with a brief explanation.

Our fire department, in the past, has not been in a position to consider fire-hose purchases yearly, but you may notice that we had one bidding for them in 1932, one for our department of water in 1933, and again another for the fire service in 1934. In asking for quotations, we have used a city specification which we designed with limits under one or two items slightly higher than those found in the so-called "underwriters' specifications", and recently, or particularly in the 1934 transaction, we allowed bidders also to quote on brand hose which they considered equal to or better than that which might be furnished under our specifications.

While all of the prices were not identical, many of them are so listed and these, I believe, were based on a strictly specification hose. The rest of the story, I think, is told by the computations of bids themselves, although as a matter of general information, you may note that we have circled in pencil the awards actually made and that in two instances, the contract price governing was different from that on which apparently an agreement had been reached.

This whole situation has created a very difficult problem for us and I certainly can sympathize with Mayor LaGuardia of New York in his protest as to identical bids. Incidentally, the same condition seems to persist in the purchase of other commodities and by the time this letter is received, you may also have received one written by me yesterday illustrating the same thing in connection with bids taken for pneumatic paving breakers.

Please let me know if there is anything else this office may supply your conference in its studies.

Very truly yours,

CHARLES E. LEX, JR.
City Purchasing Agent.

Reference No. 1650-47. Date June 5, 1934.

CITY OF CINCINNATI, DEPARTMENT OF PURCHASING, COMPUTATION OF BIDS

Department of safety, division of fire. Bids opened 12 noon, June 5, 1934

FIRE HOSE	Eureka Fire Hose Manufacturing Co.		Fabric Fire Hose Co.		The B. F. Goodrich Rubber Co.	The Harrison Tire & Rubber Co.	Home Rubber Co.	The Wm. T. Johnston Co.	The Manhattan Rubber Manufacturing Division of Raybestos Manhattan Co.		The Netherland Rubber Co.	The Queen City Supply Co.
10,000 feet (more or less) 2½ inch I. D. cotton rubber-lined fire hose in accordance with city of Cincinnati standard specifications No. CC-127 revised May 4, 1934; complete with male and female pocker lug type couplings:												
Price per foot	$0.80		$0.80		$0.80	$0.76	$0.80	$0.80	$0.80		$0.80	$0.80
Brand or trade name.	Specifications		Elkshead		Specifications	New York Belting & Packing Co.	Ace High	Fire Fite	Specifications		Whitehead	Specifications.
Manufacturer	Eureka Fire Hose Manuturing Co.		Fabric Fire Hose Co.		B. F. Goodrich Rubber Co.	do	Home Rubber Co.	Quaker City Rubber Co.	Manhattan Rubber Manufacturing Division of Raybestos Manhattan Co.		Whitehead Bros. Rubber Co.	Boston Woven Hose & Rubber Co.
	Per foot	Trade name	Per foot	Trade name					Per foot	Trade name		
	$0.95	Northern	$0.85	Elkshead					$1.10	Panama		
	1.10	Midland		Wax and gum treated					.90	Sphynx		
	1.15	Trojan								Specified with radio-active treatment		
	1.20	Paragon	1.00	Climax					.85			
		3 ply		Wax and gum treated								

Alternate proposals	All alternates manufactured by Eureka Fire Hose Manufacturing Co.		F. o. b. Akron, Ohio, freight, not express, allowed to destination on 100 pounds or over.				All alternates manufactured by Manhattan Rubber Manufacturing Co., f. o. b. Cincinnati, Ohio		
Terms	2 percent 10th proximate.	2 percent 10th proximate or net 60 days.	2 percent 10 days, 2 percent 30 days net.	2 percent 10th proximate.	2 percent 10th proximate or 60 days net.	2 percent 10th proximate or 60 days net.	2 percent 10th proximate, 60 days net.	2 percent 10 days.	2 percent 10th proximate or 60 days net.
Bond or certified check	Bond	Check	Check	Bond	Check	Bond	Bond	Bond	Bond.

FIRE HOSE	The Republic Rubber Co.	The Wirthlin-Mann Co.	American-LaFrance & Foamite Industries, Inc., by J. R. Wood Supply Co.	Atlas Fire Hose Co.	Atlas Rubber Products Co.	Bi-Lateral Fire Hose Co.	Bi-Lateral Fire Hose Co.	Cincinnati Rubber Manufacturing Co.	Continental Rubber Works
10,000 feet (more or less) 2½-inch I. D. cotton rubber-lined fire hose in accordance with city of Cincinnati standard specifications no. CC-127 revised May 4, 1934; complete with male and female pocker lug type couplings:									
Price per foot	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80	$0.99	$0.80	$0.80.
Brand or trade name	Relief	Newitt	Brigade	Energy	Relief or Flexo.	Specifications.	Congo	Specifications.	Bull-dog.
Manufacturer	Republic Rubber Co.	Newitt Rubber Co.	Goodyear Tire & Rubber Co.	Hamilton Rubber Manufacturing Co.	Republic Rubber Co.	B. F. Goodrich Co.	B. F. Goodrich Co.	Cincinnati Rubber Manufacturing Co.	Boston Woven Hose & Rubber Co.
Terms	2 percent 10th proximate or 60 days net.	2 percent 10th proximate.	2 percent 10th proximate or 60 days net.	2 percent 10th proximate or 60 days net.	2 percent 10th proximate or 60 days net.	2 percent 10th proximate.	2 percent 10th proximate.	2 percent 10 days.	2 percent 10 days.
Bond or certified check	Check	Bond	Check	Bond	Bond	Bond	Bond	Check	Informal (no bond or certified check furnished).

Reference No. 2806-46:

CITY OF CINCINNATI,
DEPARTMENT OF PURCHASING,
Cincinnati, Ohio, May 24, 1932.

Department, Safety; Division, Fire.

Computation of bids, fire hose—10,000 feet (more or less), 2½-inch, double-jacketed, cotton, rubber-lined fire hose in accordance with city of Cincinnati standard specification CC-127

	Price per foot coupled	Delivery	Terms
Fabric Fire Hose Co	$0.54	30 days	2 percent, 30 days.
E. A. Kinsey Co	.54	28 to 31 days	2 percent, 10 days.
Cincinnati Rubber Manufacturing Co	.5292		Net 30 days
Eureka Fire Hose Manufacturing Co	.54	30 days, f. o. b. Cincinnati "Eureka" special	2 percent; 15 days.
B. F. Goodrich Rubber Co	.54	30 days	2 percent, 10 days.
American Rubber Manufacturing Co	.54	60 days	2 percent, 30 days.
General Fire Hose Co	[1].54		2 percent, 10 days.
Hamilton Rubber Manufacturing Co	.54	45 days	2 percent, 30 days.
Queen City Supply Co	.54	14 days	2 percent, 10 days.
Harrison Tire & Rubber Co	.54	3 weeks	2 percent, 10 days.
National Fire Equipment Co	.85		1 percent, 30 days.
American-LaFrance Foamite Industries, Inc.	.90	30 days	Net 30 days
Republic Rubber Co	[2].55		2 percent, 10 days.
Doermann Roehrer Co	.57	4 to 6 weeks	2 percent, 10th proximate
Consumers Rubber Co	.57	30 days	2 percent, 10 days.
Boston Woven Hose & Rubber Co	.57	30 days	2 percent, 10 days.
Bi-Lateral Fire Hose Co	[3].54	20 days	2 percent, 30 days.
Wm. T. Johnston Co	.57		2 percent, 10 days.
Home Rubber Co	.57	24 days	2 percent, 10 days.
ALTERNATE 1			
Fabric Fire Hose Co	$0.96—		
General Fire Hose Co	[4].55		
American-LaFrance Foamite Industries, Inc.	.55		
Bi-Lateral Fire Hose Co	[5].64		
ALTERNATE 2			
American-LaFrance Foamite Industries, Inc.	$0.54		

[1] F. o. b. Cincinnati or fire department storeroom.
[2] Without Underwriters' label, deduct 1 cent per foot
[3] 3-year guaranty.
[4] Covers label of Underwriters.
[5] 6-year guaranty.

Water works. *July 11, 1933.*

Fire hose.—1,200 feet (more or less), 2½-inch I. D. double-jacketed, cotton, rubber-lined fire hose, complete with rocker-lug couplings

[Alternate: Jacket shall be treated with wax and gum or other material]

	Price per foot	Price per foot including treating of jacket
American-LaFrance & Foamite Corporation Terms: 2 percent, 30 days; net 60 days; check.	$0.77	$0.82
Continental Rubber Works Terms: 2 percent, 10 days; check.	.77	.82
Cincinnati Rubber Manufacturing Co Terms: 2 percent, 10 days; check.	.77	
Doermann-Roehrer Co Terms: 2 percent, 10 days; check.	.77	.82
Eureka Fire Hose Manufacturing Co Terms: 2 percent, 30 days; check.	.77	.82
B. F. Goodrich Rubber Co Terms: 2 percent, 30 days; check.	.7834	.95
Harrison Tire & Rubber Co Terms: 2 percent, 10th proximate; check.	(1)	(2)
Wm. T. Johnston Co Terms: 2 percent, 10 days; bond.	[3].77	[3].82
E. A. Kinsey Co Terms: 2 percent, 10th proximate; bond.	.77	.90
Netherland Rubber Co Terms: 2 percent, 10 days; check.	[3].77	[3].82
Queen City Supply Co Terms: 2 percent, 10 days; bond.	.77	.82
Republic Rubber Co. (informal) not properly signed Terms: 2 percent, 10 days; bond.	.77	.82
Wirthlin-Mann Co Terms: 2 percent, 10 days; bond.	.77	.78

[1] $0.65 uncoupled plus $6 per set for couplings attached, or $0.77.
[2] $0.75 uncoupled plus $6 per set for couplings attached, or $0.87.
[3] Coupled.

Identical bids on large gate valves

BIDS RECEIVED ON FEB. 7, 1935, AND REJECTED

	Three 20-inch, double-hub gate valves	Four 24-inch, double-hub gate valves	One 36-inch double-hub gate valve	Total
	Each	*Each*	*Each*	
Chapman Valve Manufacturing Co	$319.13	$472.35	$1,231.40	$4,078.19
Kennedy Valve Co	319.13	472.35	1,231.40	4,078.19
Ludlow Valve Manufacturing Co	319.13	472.35	1,231.40	4,078.19
Michigan Valve & Foundry Co	319.13	472.35	1,231.40	4,078.19
Rundle Spence Co	319.13	472.35	1,231.40	4,078.19
Western Gas Construction Co	319.13	472.35	1,231.40	4,078.19
Last price paid	222.70	320.45	[1]660.66	
Date	July 1934	July 1934	June 1932	
MARCH 7, 1935				
Chapman Valve Manufacturing Co	319.13	$472.35	$1,231.40	
Kennedy Valve Co	319.13	472.35	1,231.40	
Michigan Valve & Foundry Co	319.13	472.35	1,231.40	

[1] Approximate.

FOUR INFORMAL OFFERS MADE MARCH 29, 1935, ALL SAME AS ABOVE; NO EXPLANATION, NO DEFENSE MADE BY ANYONE. "TAKE IT OR LEAVE IT ATTITUDE"

Identical prices, city of Milwaukee.

Pipe and fittings: Galvanized malleable brass (Dec. 20, 1933, Civil Works Administration), lump sum price, $1,907.84; 11 identical bids received: Acme Plumbing & Heating Co., Bayley Heating & Supply Co., Cordes Heating & Supply Co., Crane Co., F. R. Dengel Co., Hoffman Manufacturing Co., Milwaukee Plumbing & Heating Co., Pritzlaff Hardware Co., Rex Packing Co., Robert Rom Co., Rundle Spence Co., Standard Sanitary Manufacturing Co., Wisconsin Plumbing & Heating Co. Contract awarded by ballot.

Fiber conduit and couplings (Dec. 22, 1933): 4,000 pieces 5-foot lengths, fiber conduit, length price October 1933, $0.5203; 250 3½-inch fiber conduit couplings, each, price October 1933, $0.09614. Five identical bids from the following: Graybar Electric Co., General Electric Co., Line Material Co., Mansville Sales Corporation, Westinghouse Electric & Supply Co.

Liquid chlorine: November 1928, 60,000 pounds, six bids received as follows:

$0.054 per pound less 1 percent, 10 days	$0.05346
$0.0544 per pound less 1 percent, 10 days	.053856
$0.0545 per pound net	.0545
$0.0565 per pound less 1 percent, 10 days	.055935
$0.0565 per pound less 1 percent, 10 days	.055935
$0.0559 per pound net	.0559

April 1932, 73,500 pounds, six identical bids received: $0.0565 per pound less 2 percent, 10 days.

April 1933, 75,000 pounds, four bids received, identical, exception cash discount: $0.065 per pound, 2 bids, less 1 percent 10 days; 1 bid, less 2 percent, 10 days; 1 bid, less 4 percent, trade discount.

EXHIBIT 1

WIRES AND CABLES

Wires and cables for the Bureau of Electrical Service: 12 identical bids received from 12 firms, 1 bid received which was much higher, February 1934; 9 identical bids received December 1933; 14 bids, not identical, January 1932 (lowest bid shown); 6 bids, not identical, May 1926 (lowest bid shown).

Per M feet	February 1934	December 1933	January 1932	May 1926
Item 1	$134	$134	$81.90	$147.90
Item 2	264	264	211.24	235.50
Item 3	160	160	86.50	355.00
Item 4	242	242	122.00	242.00
Item 5	339	339	121.10	244.20
Item 6	445	446	200.00	214.50
Item 9	132	132	40.35	162.70
Item 11	120	116	72.60	134.70
Item 12	182	177	128.00	85.00
Item 14	133	----------	38.00	65.00

NOTE.—Specifications used in 1933 and 1934 were different from those of previous years on items omitted.

EXHIBIT 2

PORTLAND CEMENT

Summary of cement prices: January 1926, $2.26 per barrel, net; December 1928, $2.02 per barrel, net; November 1931, $1.09 per barrel, net; December 1933, $2.42 per barrel net. The December 1933 price of $2.42 per barrel represents an increase of 122 percent over November 1931 price; 19 percent over December 1928 price; 7 percent over January 1926 price.

EXHIBIT 3.—*Concrete, ready mixed*

	Price per cubic yard		
	January 1934–July 1933	April 1933	September 1929
Item A (7 bags cement) per cubic yard	$7.98	$4.74	$4.78
Item B (6 bags cement) per cubic yard	7.29	4.35	
Item C (5 bags cement) per cubic yard	6.79	3.98	
Item D (4 bags cement) per cubic yard	6.19	3.83	
Cash discount	Net	Net	(1)

[1] $0.10 per ton, tenth proximate.

NOTE.—July 1933 price represents an increase of—
68 percent over April 1933 price.
70 percent over September 1929 price.

EXHIBIT 4.—*Lumber*

Description of lumber	November and December 1932	November and early December 1933	Approximate increase
			Percent
1 by 8 by 8, 10, 12, 14, 16, no. 1 yellow pine, dressed 4 sides.	$23.50 to $25	$35 to $38	40
2 by 8 by 16, no. 1 yellow pine, dressed 4 sides	$21 to $23.50	$32 to $36	38
2 by 4 by 7 and 10, no. 1 yellow pine, dressed 4 sides	$23.50 to $25	$32 to $40	40
2 by 10 by 16, no. 1 yellow pine, dressed 4 sides	$24 to $25	$34 to $38	40
1 by 6 by 16, no. 1 white pine, D. and M	$31 to $40	$41 to $45	12
1 by 8 by 16, no. 1 white pine, dressed 4 sides	$32 to $44	$45.50 to $48	9
2 by 4 by 12, no. 1 white pine, dressed 4 sides	$24 to $30	$48 to $54	80
2 by 6 by 16, no. 2 white pine, dressed 4 sides	$26 to $34	$35 to $50	40
1 by 10 by 16, no. 1 white pine, dressed 4 sides	$23 to $48	$44 to $53	20
2 by 6 by 12, maple hearts	$20 to $21	$29 to $32	45

	February 1934	Late December 1933
D select pine, dressed four sides (all bids identical)	$75.50	$62

NOTE.—A 20 percent increase since December 1933.

EXHIBIT 5.—*Uniform prices*

STEEL PIPE [1]

	200 length galvanized steel pipe 10 feet 9 inches long	200 length galvanized steel pipe 11 feet long	25 length galvanized steel pipe 11 feet 8 inches long	Total
1 bid	$1.93	$1.99	$2.08	$836
11 bids (identical)	2.30	2.38	[2] 2.48	998

[1] Bids received on Nov. 3, 1933.
[2] Net.

The low bid on November 1933 represented the poorest lot of pipe ever shipped to the city, 90 percent being old used pipe heavily corroded, rusted, pitted, and regalvanized. The pipe was rejected and has been replaced with good pipe. This contractor evidently did not belong to the "trust."

The 11 identical bids represent an increase of 23 percent more than the prices paid in March 1932.

IDENTICAL PRICES (CITY OF MILWAUKEE)

Steel, reinforcing (Dec. 21, 1933 Quot. 29, C. W. A.).—Six identical bids received; lump sum $34. Following bidders: Wm. Eichfeldt & Son, W. H. Pipkorn Co., Jos. Ryerson & Sons, Truscon Steel Co., Worden Allen Co.

Steel, reinforcing (Dec. 19, 1933, Quot. 18, C. W. A.).—Eight identical bids received; lump sum $457. Following bidders: Calumet Steel Co., Concrete Engineering Co., Cunningham Ortmayer Co., Kalman Steel Co., W. H. Pipkorn Co., Ryerson & Sons, Truscon Steel Co., Worden Allen Co.

Blueprint paper (Feb. 6, 1934).—For furnishing blueprint paper for a period of 3 months; 6 identical bids received:

	Price per roll
48 rolls 21-inch blueprint paper, 50 yards to roll	$1. 65
21 rolls 24-inch blueprint paper, 100 yards to roll	4. 06
10 rolls 30-inch blueprint paper, 100 yards to roll	4. 40
25 rolls 38-inch blueprint paper, 100 yards to roll	5. 20
7 rolls 42-inch blueprint paper, 50 yards to roll	3. 00
2 rolls 54-inch blueprint paper, 50 yards to roll	4. 40

Following bidders: Eugene Dietzgen Co., Frederick Post Co. of Wisconsin, Schiller Blueprint Co., O. J. Wallber & Son, H. H. West Co., David White Co., Inc.

INCREASES IN PRICES.

Lumber prices received by the city of Milwaukee (Feb. 7, 1934, C. W. A.).—22 pieces 2 by 4 by 16, 48 pieces 2 by 4 by 14, 20 pieces 2 by 4 by 10, 57 pieces 2 by 4 by 8, D, select pine dressed 4 sides.

Price per 1,000 feet: Pagel Lumber Co., $100; Hilty Forster Lumber Co., $90.50; Schroeder Lumber Co., $90.50; Carl Miller Co., $84; Mid-City Lumber Co., $90.50; Steinman Lumber Co., $75.50.

Prices December 1933: Wisconsin Lumber Co., $65; Hilty Forster Co., $70; Schroeder Lumber Co., $70; Carl Miller Co., $70; Mid-City Lumber Co., $72; Steinman Lumber Co., $62.

Price December 1932, $30.

Identical bids

Date bids opened and name of article bid on—	Brief description of article	Number of firms bidding	Number of identical bids	Amount bid			Quantity bid for
				Identical bidders	Firm A	Firm B	
Feb. 4, 1935:							
Mo Rex fire tile	9-inch straight	5	4	$35.00	$32.50		500.
Do	4 by 6 by 10 inch	5	5	40.00			200.
Mo Rex fire brick	Wedge no. 1	5	4	35.00	32.50		500.
Do	Wedge no. 2	5	4	17.50	16.25		250.
Hiloset cement		5	5	46.50			2–500 drums.
Feb. 28, 1935, Peddler plates	1935, yellow field blue letters	4	4	.11			375 pairs, 750 plates
Mar. 7, 1935:							
Common brick		8	4	12.50			46,000.
			4	13.70			
3-inch book tile	12 inch by 17½ inch	9	9	.171			2,800 pieces.
4-inch hard burnt shale		9	6	.08	(2)	(1)	100 square feet.
Partition tile					.088	.0934	
6-inch partition tile		9	8	.11	.1282		680 square feet.
Feb. 28, 1935:							
Metal lath	Bar-X lath-milcor or equal	15	14	.24	.26		1,420 square yards.
Bar-X or equal		15	13	.26	.285		65 square yards.
Milcor		9	7	.495	.47		
Milcor steel channels	1½-inch cut to 18-foot lengths	15	15	.02			216 linear feet.
Milcor or equal	Expansion corner bead	15	13	.034	.03	.029	1,000 linear feet.
	18-inch gage zinc-coated				(4)	2.00	2 cartons.
Certified steelcrete	Bank tie wire	15	9	2.06	4.125	2.375	50 pounds.
	Alternate bid, all bid per coil	7	5	3.08	1.92		
Aug. 16, 1934, Reinforcing steel mesh	As per city specifications	3	3	344.31			
		3	3	1.87			
Sept. 21, 1934:							
Envelopes:							
Manila	6½ by 3, 5/8 inch 28 pound stock	12	6	.52	.53	.575	130 boxes.
White	9½ by 4, 1/8 inch 28 pound stock	12	11	1.09	1.085		80 boxes.
Do	In 100-box lots	8	7	1.005	1.32		100-box lots.
Do	6½ by 3, 5/8 inch 24 pound stock	12	11	.52	.515		

The following is the latest price comparisons made by the city of Milwaukee on "ready-mixed concrete":

Concrete—ready-mixed (4 identical bids received on Apr. 5, 1934)

[Price per cubic yard]

	April 1934 [1]	February 1934	July 1933	April 1933	September 1929
Item A (7 bags cement per cubic yard)	$7.80–$10.30	$7.90	$7.98	$4.74	$4.78
Item B (6 bags cement per cubic yard)	7.25– 9.75	7.25	7.29	4.35	----------
Item C (5 bags cement per cubic yard)	6.70– 9.20	6.70	6.79	3.98	----------
Item D (4 bags cement per cubic yard)	6.15– 8.65	----------	6.19	3.83	----------
Cash discount	Net	Net	Net	Net	(2)

[1] April 1934 prices depend upon quantities delivered at one time.
[2] 10 cents per ton, tenth proximate.

April 1934 price represents an increase of 13 percent over February 1934 price; 16 percent over July 1933 price; 93 percent over April 1933 price; 71 percent over September 1929 price.

QUOTATION No. 20. *Blueprint paper—Feb. 6, 1934*

[Blueprint paper requirements for a period of 3 months from date of award]

All bids identical:	Price per roll
48 rolls 21-inch blueprint paper, 50 yards to roll	$1.65
21 rolls 24-inch blueprint paper, 100 yards to roll	4.06
10 rolls 30-inch blueprint paper, 100 yards to roll	4.40
25 rolls 38-inch blueprint paper, 100 yards to roll	5.20
7 rolls 42-inch blueprint paper, 50 yards to roll	3.00
2 rolls 54-inch blueprint paper, 50 yards to roll	4.40

Following bidders: Eugene Dietzgen Co., Frederick Post Co. of Wisconsin, Schiller Blueprint Co., O. J. Wallber & Son, H. H. West Co., David White Co., Inc.

Reinforcing steel prices December 21, 1933, Quotation No. 29. C. W. A. work (5 bids received).

Bids on reinforcing steel. All bids identical, lump sum $34.

Following bidders: William Eichfeldt & Son, W. H. Pipkorn Co., Joseph Ryerson & Sons, Truscon Steel Co., Worden Allen Co.

December 19, 1933, Quotation No. 18. C. W. A. work (8 bids received).

Bids on reinforcing steel. All bids identical, lump sum $457.

Following bidders: Calumet Steel Co., Concrete Engineering Co., Cunningham Ortmayer Co., Kalman Steel Co., W. H. Pipkorn Co., Ryerson & Son, Truscon Steel Co., Worden Allen Co.

Fire-hose bids received Mar. 28, 1935, C. P. No. 12

	(A) 500 feet 1½-inch	(B) 10,000 feet 2½-inch (more or less)	(C) 2,500 feet 3½-inch (more or less)	(D) 100 feet 4-inch
Last prices paid	*Per foot* $0.36	*Per foot* $0.4956	*Per foot* $0.8993	*Per foot* $1.50
American-LaFrance Co., 1047 West Winnebago Street, Milwaukee	.55	.84	1.35	1.66
American Rubber Manufacturing Co., Park Avenue and Watt Street, Oakland, Calif.	.55	.84	1.35	1.66
Badger Belt & Specialty Co., 934 North Fifth Street, Milwaukee	.55	.84	1.35	1.66
Bi-Lateral Fire Hose Co. (Clay Baird), 20 North Wacker Drive, Chicago, Ill.	.55	.84	1.35	1.66
Cunningham-Ortmayer Co., 429 W. Michigan Avenue, Milwaukee	.55	.84	1.35	----------
Eureka Fire Hose Division of United States Rubber Products, Inc.	.55	.84	1.35	1.66
Fabric Fire Hose Co., 1114 Circle Tower, Indianapolis, Ind.	.55	.84	1.35	1.66
Ford Rubber Co., 338 North Water Street, Milwaukee	.55	.84	1.35	1.66
General Rubber Co., 1123 North Water Street, Milwaukee	.55	.84	1.35	----------
Hoffmann Manufacturing Co., B., 1819 West St. Paul Avenue, Milwaukee	.55	.84	1.35	1.66
Kidde & Co., Inc., Walter, 35 East Wacker Drive, Chicago, Ill.	.55	.84	1.35	----------
Kuehn Co., N. L., 1022 North Fourth Street, Milwaukee	.55	.84	1.35	1.66

Fire-hose bids received Mar. 28, 1935, C. P. No. 12—Continued

	(A) 500 feet 1½-inch	(B) 10,000 feet 2½-inch (more or less)	(C) 2,500 feet 3½-inch (more or less)	(D) 100 feet 4-inch
	Per foot	*Per foot*	*Per foot*	*Per foot*
Milwaukee Rubber Co., 2406 West Clybourn Street	$0.55	$0.84	$1.35	----------
Lipmannp Engineering Works, 4603 West Mitchell Street, West Allis, Wis.	.55	.84	1.35	$1.64
Petley Co., J. R., 759 North Milwaukee Street, Milwaukee	.55	.84	1.35	1.66
Reichel-Korfmann Co., 221 East Clybourn Street, Milwaukee	.55	.84	1.35	1.66
Shadbolt & Boyd Co., 533 North Flankinton Avenue, Milwaukee	.55	.84	----------	----------
Western Iron Stores Co., 319-331 East Clybourn Street, Milwaukee	.55	.84	1.35	1.66
Wilson Co., J. D., 617 North Second Street, Milwaukee	.55	.84	1.35	1.66

BI-LATERAL FIRE HOSE CO.,
September 6, 1934.

To Our Agents:

We were virtually compelled to furnish the code authorities with a list of prices of our standard brands of fire hose, which we are supposed to strictly adhere to and to protect our agents with a profit, we have adopted the following:

Special motor, 3-inch	$1.40
Motor, 2½-inch	1.30
Bi-Flex, 2½-inch	1.30
Red Star, 2½-inch	1.25
Ideal, 2½-inch	1.20

Do not under any consideration sell these brands of hose at less than the prices shown above.

For your information, the prices given the code authorities by the Eureka Fire Hose Co. are as follows:

Eureka, 4-ply	$1.40	Eagle, double jacket, treated	$1.15
Paragon, 3-ply	1.30	Superior, double jacket, treated	1.00
Red Cross, 2-ply	1.20	Blue Diamond, single jacket	1.05
Trojan, double jacket	1.20	Helmet, single jacket	1.00
Midland, double jacket	1.15	Trojan, single jacket	.95
Blue Queen, double jacket	1.10	Blue Queen, single jacket	.90
Northern, double jacket	1.00	Northern, single jacket	.80
Avon, double jacket	.95	Avon, single jacket	.75
Peerless, double jacket, treated	1.20		

Also, the prices given the code authorities by the Fabric Fire Hose Co. are as follows:

Unique, double jacket	$1.40
Keystone, double jacket	1.30
Patrol, double jacket	1.25
Arrow, double jacket	1.20
Brown Diamond, double jacket	1.20
Safety, double jacket	1.10
Warwick, double jacket	1.00
Arrow, single jacket	1.05
Knickerbocker, single jacket	1.00
Brown Diamond, single jacket	.95
Safety, single jacket	.90
Warwick, single jacket	.85

If you find any deviation from these prices, report it to us at once. If you find that to secure business there has been any extra hose promised or furnished, any donations made in the way of supplies or any discounts, give us this information promptly so we can stop the filling of the order.

You understand that we cannot fill an order if you break the code prices, but you can have your own brands under the various constructions, under which you will not be bound should you desire to sell the hose at a less figure. You can sell any brand of hose you please under the name of "Bi-Lateral White" or

"Bi-Lateral Wax-Treated," or if you want to get up a brand of your own for the bi-flex construction, let us know.

You understand that our Congo Brand of fire hose sells at 99 cents per foot.

Under no condition mention the brand where the price deviates from the figures given above.

Kindly acknowledge receipt of these instructions.

Very truly yours,

BI-LATERAL FIRE HOSE CO.,
CLAY BAIRD, *President.*

Bids received on fire hose by the Central Board of Purchases, Milwaukee, Wis., Jan. 31, 1935

[Prices shown are per foot]

Bidder	(A) 500 feet 1½-inch fire hose	(B) 10,000 feet (more or less) 2½-inch fire hose	(C) 2,500 feet (more or less) 3½-inch fire hose	(D) 100 feet 4-inch fire hose
Kuehn Co., N. L., 1022 North Fourth Street, Milwaukee, Wis.	$0.5088	$0.777	$1.2488	$1.5355
American LaFrance Co., 445 Lake Shore Drive, Chicago, Ill.	.55	.84	1.35	1.66
American Rubber Manufacturing Co., Oakland, Calif.	.55	.84	1.35	1.66
Badger Belt & Supply Co., 935 North Fifth Street, Milwaukee, Wis.	.55	.84	(1)	(1)
BiLateral Fire Hose Co., 20 North Wacker Drive, Chicago, Ill.	.55	.84	1.35	1.66
Cunningham Ortmayer Co., 429 West Michigan Street, Milwaukee, Wis.	.55	.84	1.35	(1)
Eureka Fire Hose Co. (division of United States Rubber Co.), 1790 Broadway, New York City	.55	.84	1.35	1.66
Fabric Fire Hose Co., Sandy Hook, Conn.	.55	.84	1.35	1.66
Factory Equipment Co., 516 North Plankinton Avenue, Milwaukee, Wis.	.55	.84	1.35	1.66
Ford Rubber Co., 342 North Water Street, Milwaukee, Wis.	.55	.84	1.35	1.70
General Rubber Co., 1123 North Water Street, Milwaukee, Wis.	.55	.84	1.35	(1)
Goodall Rubber Co., 120 North Peoria Street, Chicago, Ill.	.55	.84	1.35	1.63
Hoffman Manufacturing Co., B., 1819 West St. Paul Avenue, Milwaukee, Wis.	.55	.84	1.35	1.63
Kidde Co., Walter, 35 East Wacker Drive, Chicago, Ill.	.55	.84	1.35	(1)
Milwaukee Rubber Co., 2406 West Clybourn Street, Milwaukee, Wis.	.55	.84	1.35	(1)
Reichel Korfmann Co., 221 East Clybourn Street, Milwaukee, Wis.	.55	.84	1.35	1.66
Shadbolt & Boyd Co., 533 North Plankinton Avenue, Milwaukee, Wis.	.55	.84	(1)	(1)
Wilson & Co., J. D., 617 North Second Street, Milwaukee, Wis.	.55	.84	1.35	1.66
Price paid last contract	[2].36	[2].4956	[2].8992	[3]1.50

[1] No bid. [2] Year 1931. [3] Year 1928.

STATEMENT OF HARRY A. BABCOCK ATTORNEY, FEDERAL TRADE COMMISSION

(The witness having been first duly sworn by the chairman, testified as follows:)

The CHAIRMAN. I understand that you are the attorney for the Federal Trade Commission, that is, one of the attorneys?

Mr. BABCOCK. Yes, sir.

The CHAIRMAN. And that you had this matter, about which we have heard much discussion, in hand?

Mr. BABCOCK. That is correct.

The CHAIRMAN. Just state as briefly as you can the situation.

Mr. BABCOCK. I am an attorney of the Federal Trade Commission, with 13 years' experience, in the Examining Division, for the most part. I am attached to the New York office of the Commission.

In the regular course of my duties, I believe on March 6 of this year, I received instructions to investigate certain charges that had been laid before the Federal Trade Commission with respect to the commodity, fire hose, and claims that prices were being fixed upon that commodity.

The name of the respondent was given to me as the Rubber Manufacturers' Association, Inc. I made an investigation, and at the direction of the Commission, Mr. Chairman, I attend here with that full record, with direction to serve your committee in any manner that I can.

The CHAIRMAN. Has it been turned over yet, or a complaint made to the Department of Justice?

Mr. BABCOCK. That I do not know, sir. I, however, do not so understand.

The CHAIRMAN. You have merely made your report to the Federal Trade Commission?

Mr. BABCOCK. That is right.

The CHAIRMAN. Is there anything else any member of the committee wishes to ask?

Senator HASTINGS. Has that report been made a part of our record?

The CHAIRMAN. Yes; that was filed with our committee on Friday or Saturday. If it has not been, it will be. You have another copy of that report?

Mr. BABCOCK. Yes; I do have.

The CHAIRMAN. The clerk will take that report. We will turn it over to the experts here of the committee.

Mr. BABCOCK. I have the full 2,000-page record here. Shall I take that back to the Commission?

The CHAIRMAN. I would like that to be available to the committee's experts.

Senator HASTINGS. How long is the report?

Mr. BABCOCK. My report is 83 pages.

Senator HASTINGS. What is your conclusion?

Mr. BABCOCK. I think it is a case of price-fixing.

Senator CLARK. What did you say you found?

Mr. BABCOCK. I found that the members of the mechanical rubber goods division of the Rubber Manufacturers Association, Inc., were fixing prices.

Senator COUZENS. Who are the officers of that association?

Mr. BABCOCK. J. H. Connors is the chairman.

Senator COUZENS. Who is he? What industry is he with?

Mr. BABCOCK. Mr. Connors is the vice president of the B. F. Goodrich Co., of Akron, Ohio.

Senator COUZENS. Who are the other officers?

Mr. BABCOCK. C. E. Garrison. He is president of the Electric Hose & Rubber Co., of Wilmington, Del.

Senator CLARK. Is this the code authority you are giving us?

Mr. BABCOCK. The Mechanical Division. N. R. Young, president of the Hamilton Rubber Manufacturing Co., of Trenton.

Senator CLARK. Is that all?

Mr. BABCOCK. Yes, sir.

Senator CLARK. Have you the list of directors of the manufacturers' organization?

Mr. BABCOCK. Yes, sir; they are in my record back there.

Senator CLARK. It is going in the record anyway.

Senator BARKLEY. These three names that you have mentioned, are they on the code authority?

Mr. BABCOCK. They are the code authority.

Senator BARKLEY. Just the three?

Mr. BABCOCK. Yes, sir.

Senator BARKLEY. Did I understand you a while ago to say that your conclusion was that the trade was fixing the prices or the code authority was fixing the prices?

Mr. BABCOCK. The industry, the mechancial rubber goods division, the members thereof, fixed prices prior to the code, on fire hose, at least. Subsequent to the code, that agreement of conspiracy and price fixing was perfected and consummated and made 100 percent.

Senator CLARK. Is there any difference in the personnel of the officers of the trade association and the code authority? As a matter of fact, the trade association just stepped in and became the code authority, did it not? Does your report disclose that?

Mr. BABCOCK. Yes, sir; it is the same interests, of course.

Senator HASTINGS. Were they exactly the same authority, the same officers?

Mr. BABCOCK. Some of them were. I could not say that they all were.

Senator HASTINGS. About how many members were there of that association? Did the whole industry belong to this association?

Mr. BABCOCK. The Rubber Manufacturers Association is made up of 194 principal manufacturers of rubber. It is a $1,225,000,000 business in its entirety.

Senator HASTINGS. Do you know how many boards of directors they have?

Mr. BABCOCK. That information is in my record, Senator.

Senator HASTINGS. Do you know about how many there were?

Mr. BABCOCK. There are as many directors as there are divisional divisions. I can read you the divisions.

Senator COUZENS. While you are looking that up—these same industries were also involved in making tires, were they not?

Mr. BABCOCK. Not the mechanical rubber goods division, however.

Senator COUZENS. The same industries that you have mentioned were also making tires?

Mr. BABCOCK. Yes, sir.

Senator COUZENS. And they fixed the prices, from your investigation, before the adoption of the code?

Mr. BABCOCK. Yes, sir.

The CHAIRMAN. And since then they have not altered their policy?

Mr. BABCOCK. That is correct. They have increased the prices.

Senator HASTINGS. Did you say they had increased the prices?

Mr. BABCOCK. Yes, sir.

The CHAIRMAN. You have not found that they paid much attention to this order of the President with reference to the 15 percent flexibility?

Mr. BABCOCK. Not so far as cities and municipalities are concerned.

Senator CLARK. Is this not true, that the very same crowd that has been fixing the prices in violation of the law prior to the N. R. A. moved in and became the code authority and claimed to fix prices by virtue of the law after the N. R. A.

Mr. BABCOCK. That is substantially true.

Senator BARKLEY. The antitrust laws did not have much effect on them before they were suspended, then, did they?

Mr. BABCOCK. No.

Senator HASTINGS. Mr. Babcock, I would like to find out who are the members of the code authority, how many there are, and what are their positions and their relation to this manufacturing association?

Mr. BABCOCK. Well, the president of the Rubber Manufacturers Association, is a gentleman by the name of Viale. He is, by the terms of Code No. 156, the chairman of the general code authority.

Senator HASTINGS. Now, go on down.

Mr. BABCOCK. Mr. Kunze, whose name has been mentioned here, is the secretary of the Rubber Manufacturers Association, Inc., and also secretary of the mechanical division code authority, within whose range comes fire hose.

Senator HASTINGS. Go on down the list. Is it a long list?

The CHAIRMAN. You might put that in the record, Mr. Babcock.

Mr. BABCOCK. I could.

The CHAIRMAN. I wish you would supply that to us.

Senator HASTINGS. Mr. Chairman, I would like to get it in the record right now, the particular relationship between the officers of that association and the code authority. Were they identical?

Senator COUZENS. He said not, a while ago.

Mr. BABCOCK. I said that some of them were. I can say that much now.

The CHAIRMAN. I wish you would make an investigation of that fact and supply it. We will put you on again on that proposition.

Is the Federal Trade Commission doing everything to expedite this matter and do what it is charged to do under the law with reference to the violations of the unfair practices.

Mr. BABCOCK. So far as I can answer that question, Mr. Chairman, we have been very alert and active in investigation. I, of course, am not connected with the prosecution department.

Senator HASTINGS. In your judgment, after your investigation, do you think the Federal Trade Commission ought to have taken action against them before the N. R. A. became effective?

Mr. BABCOCK. If we had been in possession of the facts, we could have; yes, sir.

Senator HASTINGS. If you had been in possession of the facts which you now have?

Mr. BABCOCK. If we had any complaints. We had not had any complaints.

Senator HASTINGS. Does not the Federal Trade Commission act except upon complaints from somebody?

Mr. BABCOCK. As a rule that is true, Senator. If, however, we have notice of irregularity, or a practice being performed by one interest where we are prosecuting another one doing the same thing, we of course try to bring him in.

Senator HASTINGS. Let me inquire whether or not this price-fixing which this industry is now engaged in is in violation of the code itself.

Mr. BABCOCK. It is.

Senator HASTINGS. It is in violation of the code itself?

Mr. BABCOCK. It is.

Senator HASTINGS. That is, the code does not permit any such price-fixing?

Mr. BABCOCK. I can answer you by stating that they are doing things that they were never directed to or permitted to by the code.

Senator HASTINGS. So that they are not only violating the antitrust laws, but they are violating the code under which they are operating?

Mr. BABCOCK. I cannot say "yes" to that. They are going farther than anything permitted by their code.

Senator HASTINGS. That is a violation, too, is it not?

Senator COUZENS. It might not be a specific violation.

Senator BARKLEY. It might not be a permissible violation. At least, they are not doing any less than they are permitted to do under the code, are they?

Mr. BABCOCK. No, sir.

Senator CLARK. Mr. Babcock, is there anybody on this code authority who is not connected with the Manufacturers' Association?

Mr. BABCOCK. No, sir.

Senator BARKLEY. Who selected them?

Mr. BABCOCK. The code provides for their election. They are selected, I think, by the members of the industry.

Senator HASTINGS. Who is the Government representative on that code?

Mr. BABCOCK. Do you mean the deputy administrator?

Senator HASTINGS. My understanding is that in the selection of the people who operate these codes the Government has something to do with it and some representation upon it.

The CHAIRMAN. Who is the deputy administrator?

Mr. BABCOCK. The deputy administrator supervises the sub-deputies who supervise the code authorities, who are in turn supervised by their employers.

Senator HASTINGS. Who is the deputy administrator of this code? What is his history?

Mr. BABCOCK. I believe I have seen his name. I am not positive. But I believe his name is Lenaerts, but I do not know.

Senator BARKLEY. Some of these codes provide—such as the clothing code—that there is to be a public representative or two upon the code authority. But that is not so in all of the codes. Is there any provision in this code for any public representative?

Mr. BABCOCK. There is no provision in this code for any public representative.

Senator BARKLEY. So that they are selected by the industry?

Mr. BABCOCK. Yes.

Senator CLARK. Coming back to the subject of your investigation; this investigation was made as a result of a complaint filed by Mr. Nicholson, the purchasing agent of the city of Milwaukee, was it not?

Mr. BABCOCK. That was one of them. We had several.

Senator CLARK. You had several complaints?

Mr. BABCOCK. Yes.

Senator CLARK. Your report disclosed that immediately upon filing a complaint with the Federal Trade Commission, that the Federal Trade Commission instructed the New York office to give priority to this investigation over anything else that was then pending, did it not?

Mr. BABCOCK. That is correct.

Senator CLARK. You were instructed by the Federal Trade Commission to proceed immediately with as complete an investigation of the whole subject-matter as it was possible for you to make, and as expeditiously?

Mr. BABCOCK. I made a major type investigation in 10 days.

Senator CLARK. Did your record disclose the fact that these same facts and matters had previously been called to the attention of the N. R. A. authorities by the city of Milwaukee and by Mayor La Guardia of New York, without any action being taken by the N. R. A. authorities on the practices?

Mr. BABCOCK. Yes, sir; it showed that.

Senator BARKLEY. Prior to the N. R. A. and even regardless of N. R. A., the Federal Trade Commission, without complaint from anybody, had the authority to make the investigation if it had reasonable grounds to believe that there was any violation of the law?

Mr. BABCOCK. If it has those reasons to believe, or has any notice.

Senator BARKLEY. Or if any information comes to it, and regardless of a formal complaint filed?

Mr. BABCOCK. It very often instigates investigations on its own motion.

Senator BARKLEY. And if there had been any information brought to the Federal Trade Commission or any complaint had been filed prior to the enactment of the N. R. A. law, and you had found the conditions to exist that you now find did exist at that time, what would the Federal Trade Commission have had the authority to do?

Mr. BABCOCK. Bring its formal complaint.

Senator BARKLEY. Against those engaged in the practice?

Mr. BABCOCK. Yes, sir.

Senator BARKLEY. It could have issued an order to cease and desist?

Mr. BABCOCK. Yes, sir.

Senator BARKLEY. Or refer it to the Department of Justice, or both?

Mr. BABCOCK. Yes, sir.

Senator CLARK. In this particular case, Mr. Babcock, just for the purpose of the record, you discovered, did you not, that in the case of the fire-hose practices for the city of Milwaukee, that Mr. Kuehn, or the Kuehn Manufacturing Co. with which Mr. Kuehn was connected, in pursuance of President Roosevelt's Executive Order No. 6767, submitted a bid for certain quantity of fire-hose, approximately 7 or 8 percent lower than the filed price?

Mr. BABCOCK. Yes.

Senator CLARK. And was awarded the contract?

Mr. BABCOCK. I believe they were.

Senator CLARK. And that thereafter he discovered that he was unable to purchase fire hose from any manufacturer in the United States?

Mr. BABCOCK. That is right.

Senator CLARK. Your record further discloses the fact that Mr. Kunze, the secretary of the Manufacturers' Association, and likewise the secretary of the Manufactured Rubber Goods Code Authority, had notified every manufacturer in the United States not to sell to Mr. Kuehn, and required from them an acceptance in writing that they would not sell to Mr. Kuehn; isn't that correct?

Mr. BABCOCK. Yes, sir.

Senator CLARK. And you found a substantially similar situation later in the case of the Ace Manufacturing Co., I believe, on bids of the city of New York?

Mr. BABCOCK. Yes, sir.

Senator HASTINGS. Does your report show how much the price has been raised since the N. R. A. went into effect?

Mr. BABCOCK. Since what I deem to be a conspiracy was entered into, it was raised from 46 cents to 84 cents to the city of New York.

Senator HASTINGS. From 46 to 84?

Mr. BABCOCK. I am pretty sure that was correct.

Senator HASTINGS. What date was that?

Mr. BABCOCK. The first raise to 70 cents occurred in July 1933.

Senator HASTINGS. It was raised from 46 to 70 in July 1933?

Mr. BABCOCK. Yes, sir.

Senator HASTINGS. Did that apply from then on to all of their customers?

Mr. BABCOCK. They did not have it very well perfected, to start with, just the large cities, my investigation shows, and they were not paying very much attention to industrial accounts, but the real perfecting of the plan came after they filed prices under the terms of code no. 156 which was done in April 1934, all of which prices and terms, and so forth, were alike.

Senator HASTINGS. And then they raised it at that time to 84 cents?

Mr. BABCOCK. They raised it 4 cents to 74, and there are certain differentials.

Senator BARKLEY. Is there any private market for the character of fire hose involved in this Milwaukee or New York case?

Mr. BABCOCK. Oh, yes, sir. Steamship lines, railroads, and all sorts of factory users.

Senator BARKLEY. Did your investigation reveal whether any of the cities in the country had been able to obtain an advantage of the President's order permitting up to 15 percent reduction below the filing prices in the purchase of anything?

Mr. BABCOCK. No city, State, town, or any other municipality, as far as I can find, had one price different from the fixed price.

Senator BARKLEY. Did your investigation show whether the prices quoted to private purchasers was different from that quoted to the cities?

Mr. BABCOCK. It did not disclose contrarily that it was not, if you see what I mean.

Senator BARKLEY. What I mean is, could a private purchaser who used fire hose, get it cheaper than the cities could?

Mr. BABCOCK. Not if the code authority could find it out, but, as a matter of fact, the bids and the conditions of the transaction with a private organization were not available to competitors, therefore there would be no report.

Senator CLARK. But because they were not a matter of public record, in other words.

Senator BARKLEY. You do not know whether there was any difference between prices made to the cities and those made to private purchasers for the same article?

Mr. BABCOCK. No, other than that I have my own thought in the matter.

Senator HASTINGS. Those fellows who cut the price to private industries are what Mr. Richberg calls the "chiseler", isn't that so?

Senator COUZENS. In other words, they had no pink slip.

Senator CLARK. Your investigation disclosed, did it not, that Mr. Kunze, the secretary of the code authority and the secretary of the Manufacturers' Association, notified the whole trade not to pay any attention to the President Order No. 6767, and which allowed bids within the 15-percent limit of tolerance, on the ground that a brief had been filed asking that the order be set aside as to that trade, did it not?

Mr. BABCOCK. Yes, sir.

Senator HASTINGS. The secretary who made that order was the same man who was the secretary of the association before the code authority was created?

Mr. BABCOCK. Yes, sir.

Senator BARKLEY. Is he still the secretary?

Mr. BABCOCK. As far as I am informed.

Senator BARKLEY. Is he still on the code authority?

Mr. BABCOCK. As far as I am informed.

Senator BARKLEY. Is he still secretary of the code authority?

Mr. BABCOCK. Yes, sir.

Senator CLARK. And of the Manufacturers' Association?

Mr. BABCOCK. Yes, sir.

The CHAIRMAN. Very well, Mr. Babcock. Please furnish that additional information for the record.

(Mr. Babcock subsequently submitted the following:)

The officers and directors of the Rubber Manufacturers Association, Inc., are as follows: A. L. Viles, president; R. H. Goebel, secretary; Wilson H. Blackwell, treasurer, U. S. Rubber Co.; W. H. Dunn, assistant treasurer, Raybestos-Manhattan, Inc.; Charles Neave, general counsel, Fish, Richardson & Neave, New York City; K. B. Anderson, assistant secretary; C. S. Dickey, assistant secretary; W. L. Finger, assistant secretary; George Flint, assistant secretary; A. C. Grimley, assistant secretary; C. W. Halligan, assistant secretary; A. D. Kunze, assistant secretary; W. E. Manley, assistant secretary.

Board of directors: A. F. Townsend, chairman, Raybestos-Manhattan, Inc.; George B. Dryden, Dryden Rubber Co., Chicago; E. B. Germain, Dunlop Tire & Rubber Co., Buffalo, N. Y.; A. B. Newhall, Hood Rubber Co., Watertown, Mass.; William O'Neil, General Tire & Rubber Co., Akron, Ohio; J. D. Tew, B. F. Goodrich Co., Akron, Ohio; E. S. Boyer, American Hard Rubber Co., New York City; P. W. Miller, Faultless Rubber Co., Ashland, Ohio; H. E. Smith, U. S. Rubber Co., New York City; C. Flusser, Goodyear Tire & Rubber Co., Akron, Ohio; J. P. Seiberling, Seiberling Rubber Co., Akron, Ohio; F. B. Davis, Jr., U. S. Rubber Co., New York City; D. D. Garretson, Electric Hose & Rubber Co., Wilmington, Del.; J. A. Lambert, Acme Rubber Mfg. Co., Trenton, N. J.; E. F. Burke, Kelly-Springfield Tire Co., New York City.

APRIL 1, 1935.

Code authority—Code no. 156

[A. L. Viles, general manager R. M. A., chairman; W. L. Finger, assistant to general manager, secretary]

Division	Principal	Alternate	Terms expire
Automobile fabrics	J. D. Lippmann, president Textileather Corporation, Toledo, Ohio.	J. T. Callahan, Archer Rubber Co., Milford, Mass.	July 25, 1935.
Flooring	O. C. Pahline, flooring division, Goodyear Tire & Rubber Co., Akron, Ohio.	M. A. Turner, Stedman Rubber Flooring Co., South Braintree, Mass.	Duration of code.
Footwear	A. B. Newhall, president Hood Rubber Co., Inc., Watertown, Mass.	T. J. Needham, vice president U. S. Rubber Products, Inc., New York City.	Feb. 14, 1936.
Hard rubber	F. D. Hendrickson, vice president American Hard Rubber Co.	Bruce Bedford, Luzerne Rubber Co., Trenton, N. J.	Not decided.
Heel and sole	R. E. Drake, Avon Sole Co., Avon, Mass.	H. T. Mason, Quabaug Rubber Co., North Brookfield, Mass.	Duration of code.
Mechanical	J. H. Connors, vice president The B. F. Goodrich Co., Akron, Ohio.	Henry Young, vice president Hamilton Rubber Manufacturing Co., Trenton, N. J.	Not set.
Rainwear	Wm. Lichtenstein, president Peerless Garment Co., Boston, Mass.	Moe Sherman, Sherman Bros. Rainwear Co., New York City.	Dec. 31, 1935.
Sponge rubber	B. B. Felix, Featheredge Rubber Co., Chicago, Ill.	P. M. Daley, Sponge Rubber Products Co., Derby, Conn.	Not set.
Rubber sundries	F. Thatcher Lane, president Seamless Rubber Co., New Haven, Conn.	T. W. Casey, vice president Seiberling Latex Products Co., Barberton, Ohio.	Do.

The CHAIRMAN. Mr. A. J. Hettinger.

STATEMENT OF A. J. HETTINGER, JR., EXECUTIVE SECRETARY DURABLE GOODS INDUSTRIES COMMITTEE

(The witness having been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. You are the executive secretary of the Durable Goods Industries Committee?

Mr. HETTINGER. I am.

Senator BARKLEY. What is the Committee for the Durable Goods Industries? What do you mean by that?

Mr. HETTINGER. The Durable Goods Industries Committee was formed following the code conference in March 1934 at the request of General Johnson. At that time a Durable Goods Industries Committee was formed, one representing the heavy industries, and the Consumers' Goods Industries Committee, representing, as the name would imply, the consumer-goods industries.

The committee was supposed to work over the evidence presented at that code committee meeting and make recommendations of those things that might be done to add to employment and general recovery or to criticize such things as might be then done which were retarding it. That committee turned in a report to the President under date, I believe, of May 14, and has continued in operation to date.

I want to say in my statements that I take that oath very seriously. I have profound convictions, and all that I am anxious for is that the truth be brought out, and I want to be cross-examined just as mercilessly as you gentlemen care to.

I believe that the N. R. A., and by that I mean the executive heads, have misled their President, have misled Congress, have misled this committee, and have misled the country.

I feel that that can be demonstrated. Whether I have the ability to or not is another question.

Senator HASTINGS. Were you connected with the N. R. A.?

Mr. HETTINGER. Approximately the 15th of August 1933 I received a wire in Detroit asking me if I could come down to the N. R. A. and spend 30 days during what was thought of as the policy-forming period. I came down for that 30 days, and, at the request of my superiors, that was gradually lengthened and lengthened.

Senator COUZENS. Who were those superiors?

Mr. HETTINGER. I was in the Division of Research and Planning, and my superiors were the various members of that Division from that time on until——

Senator COUZENS. You were a private citizen then?

Mr. HETTINGER. Yes.

The CHAIRMAN. What business were you engaged in in Detroit?

Mr. HETTINGER. Investment research.

Senator HASTINGS. But you were employed by somebody, were you not?

Mr. HETTINGER. I was in investment research, employed by the Investment Research Corporation in Detroit.

Senator COUZENS. A private organization?

Mr. HETTINGER. Yes, sir. I think I entered the N. R. A. about the 18th of August——

Senator BARKLEY (interrupting). What was the Investment Research Corporation's business?

Mr. HETTINGER. The business was investment analysis, and it has had a very few clients, but primarily 3 small investment trusts, 1 in Detroit and 2 in California.

Senator BARKLEY. And were the investment trusts engaged in the purchase and sale of securities?

Mr. HETTINGER. The same as any investment trusts in the country; yes.

Senator COUZENS. I think you misunderstood, Senator. Your corporation was not interested in buying and selling investments?

Mr. HETTINGER. No; our work was the study of them. I was the trustee for one of those three groups.

Senator BARKLEY. Did your concern recommend securities to others to be purchased?

Mr. HETTINGER. To those three investment trusts.

Senator COUZENS. In other words, they paid you a fee for the service?

Mr. HETTINGER. Right.

Senator COUZENS. You had nothing to gain by the sale or purchase of securities?

Mr. HETTINGER. No. Except for the fact that naturally if the three concerns were to prosper, there would be a growth factor, and if they were not to prosper, there would not be. Indirectly, yes.

The CHAIRMAN. All right, proceed.

Mr. HETTINGER. My tenure of service at the N. R. A. was approximately from the 18th of August in 1933 to the 1st of June 1934.

I desire to read first a paragraph from the Colorado Springs Telegraph for Friday afternoon, March 15, 1935 [Reading:]

How do I feel about the Richberg-Borah controversy concerning the effects of the codes on small business? As some of you know, I prepared the data——

The CHAIRMAN. Who is that by?

Mr. HETTINGER. This is by Charles F. Roos, and as soon as I have finished it, I will go into that. [Continuing:]

I prepared the data which Richberg and General Johnson's son used to answer the reports of the Darrow Board. I am sorry to say that these made public only the figures which were favorable to N. R. A. To illustrate, it is true that of those firms which showed increases in net worth in 1933, the greatest percentage increase occurred among the smallest firms, as reported by N. R. A., but it is also true that in every one of 16 industries examined, of those firms which showed decreases in net worth, the greatest percentage decrease occurred among the small firms. The latter, however, was not made public.

The N. R. A. both helped and hurt small firms.

Now, jumping a little—and I am perfectly willing and ready to put this whole thing into the record—

What shall we do with the N. R. A.? The obvious course is to abandon most of it as quickly as possible.

You asked, Senator, who this was. This is Charles F. Roos, and I quote here from "Who's Who in America" of 1934–35 as an indication of his trustworthiness as a witness.

Began as teaching assistant in mathematics, Rice Institute, 1920; civil engineering. Contractor, 1921–23; teaching fellow Rice Institute, 1924–26; National Research Council fellow in mathematics, 1926–28; assistant professor mathematics, Cornell University, 1928–31; sec section K (economics, sociology, and statistics), A. A. A. S., 1928–31, permanent secretary mem. exec. comm. A. A. A. S., February 1931–33; Fellow John Simon Guggenheim Memorial Foundation, April 1933–July 1933; chief of section of recovery analysis and research and secretary advisory group of industrial economists, N. R. A. Mem. Am. Math. Society, Math. Association of American, Econometric Society (joint founder, secretary-treasurer and mem. council). Independent Democrat.

Senator COUZENS. What does that mean? [Laughter.]

Mr. HETTINGER. I think that means, Senator, possibly just what I am myself. I have never voted in a Presidential election for anyone but a Democrat, because I happen to believe that that represented a sound choice. I think of myself as an independent Democrat.

I wrote him to confirm that. The thing reached me entirely accidentally. I had written an analysis of N. R. A. and sent him a copy, and I will simply read the paragraph that deals with that——

The CHAIRMAN (interrupting). This is from you to him?

Mr. HETTINGER. This is from him to me under date of March 28——

Senator COUZENS (interrupting). Was he still with the N. R. A. when he wrote that?

Mr. HETTINGER. No, sir; he was with N. R. A. when I left the 1st of June. He is, I believe, professor of economics at Colorado College now, and research director of the Cowles Commission for Research in Economics, whose Advisory Committee consists of Carl Snyder of the New York Federal Reserve Bank, Wesley C. Mitchell of Columbia University, Irving Fisher of Yale University, A. L. Bowley of London University and one of the leading statisticians of the world today, and Ragnar Frisch of the University of Norway.

Reading that particular paragraph which gives just a little more data:

When the Darrow Board report was made, Henderson asked me to prepare data for Lt. Pat Johnston (the General's son) and Donald Richberg. I worked with these, especially Johnston, for about 2 weeks supplying data on a variety of questions. In my files I have copies of most of these data and the original penciled memorandum of the General asking for certain small firm information, which, by the way, is highly interesting. Leong, Tuttle, Sasuly, Pixley, Mrs. Chisholm, Neary, and others helped me asesmble the data. Sasuly's charts

made very favorable impressions on Congressmen, especially on Senator Robinson. These were analyses of P. R. A. data showing precode and postcode employment and average wages by size of concern in 40 industries. In about half of the industries precode wages of small concerns were higher than precode wages of large concerns. I have a suspicion that Johnston showed only the charts favorable to N. R. A. but I do not know. I do know, however, that the statement which I was reported to have made in Denver is correct.

That is, this was a statement before the Denver City Club.

This appeared in the Colorado Springs Telegraph for Friday afternoon, March 15, 1935.

Now, jumping for just a moment, the N. R. A. has staged, with reference to the price situation, its hearings, one in January 1934, with voluminous evidence of the character that Mr. Nicholson brought out.

That was carefully audited. I was one of several people in charge of that meeting, with Mr. Whiteside, the active head. I helped work over that evidence. So far as I know, nothing was done with it.

Along about May, under pressure, N. R. A. announced some changes in its price policy prospectively, met with complaint from industry, wobbled, and then the Presidential Order 6767 was issued in order to provide that 15 percent trading area, and a report called for 6 months after that date.

Then in the beginning of 1935, another of these hearings, with the statement before them that the material would be audited quickly and price policies forumlated.

This is the 1st of April now, and nothing done.

As far as that Executive Order No. 6767 is concerned, the report was made and was sent to the President. Senator King asked for it, I think about 3 weeks ago. I asked Saturday whether it was available, in order to check it before my testimony. It was not. But I believe, if you will examine your N. R. A. people, you would find that the delay in substantial part is the result of the efforts to try to find some way to handle an embarrassing situation.

I will later on go into the report on the operation of the National Industrial Recovery Act presented by the Research and Planning Division under date of February 1935, I think probably as much as anything else for the benefit of this committee.

As to that report, I can form only two possible conclusions—either the Division of Research and Planning has been unwilling to turn out a frank report and has substantially colored evidence in a way that even the figures within it will not justify, and with respect to that I will simply read the last paragraph of Mr. Henderson's statement in issuing it:

In this pamphlet, prepared by the statistical section of Research and Planning Division, is presented a compendium of relative information without statement of implication or conclusion—

I think, not borne out by the report, or else that report was edited before it reached the public and this committee in such a way as to reflect no credit on the scientific ability, the independence, or, I would say, the sheer honesty of that Division. In comparing this report with the reports that they have turned out for certain hearings, the only conclusion that I can get is that this material was edited, and thoroughly edited.

There have been some very clean and very impartial pieces of work put out on individual subjects when there was no investigation of N. R. A. It would take a substantial length of time to audit that report in some detail.

As a matter of fact, I had been troubled with it, and yesterday afternoon and evening dug through it pretty thoroughly as a first approximation; but, before that, it is necessary to get a picture of what the N. R. A. actually, honestly, is and has been.

Senator COUZENS. Do I understand these conclusions that you have are the conclusions also of the durable goods committee?

Mr. HETTINGER. I would like to answer that question, Senator, very frankly. I was asked, about the 1st of December, to come with this committee for an indefinite period of time. It is a temporary assignment. I said that I would come with the committee under certain conditions. Substantially, those conditions were these: I said, "If there is anything partisan in this committee, I want nothing to do with it. Secondly, if I come with this committee, as long as I am with this committee I want to tell the truth on all occasions. If that becomes a liability, all that you have to do is to tell me, and I will put on my hat and go."

I called the chairman of the committee with respect to testimony here. I said to him that I feel that I have got to come up; the matter was under some little discussion. I said, "I can come up in one of three ways: I can come up as a private citizen, having resigned my connection with the committee; I can come up as a private citizen, still a member of the committee; or, I can come up as a private citizen and executive secretary of the committee."

The only question that was asked me was, "What do you intend to say?" I said, "I intend to tell the truth. There will be places where my opinions will deviate from the committee's, and I want to make that perfectly clear."

Senator HASTINGS. From which committee?

Mr. HETTINGER. The durable goods industries committee. Any committee of 15 men, more or less, will have divergent viewpoints within it.

Senator COUZENS. So you are not speaking for the committee?

Mr. HETTINGER. I am speaking both for the committee and myself, at this moment myself, and I will make the committee position very clear, as well, Senator.

I have gone through, as carefully as I have been able to, from such published reports as are available, the testimony with reference to the N. R. A. here. I would never recognize the N. R. A. from that testimony.

I want to go over an analysis that I prepared of the N. R. A. last summer. I think the thing, with moderate deviations, will hold good today, and I believe that it will give an orderly procedure, and I will welcome cross-examination at each point. After that I want to get into the report on the operations of the N. R. A.

This is the analysis: There will be 3 or 4 minutes of general statement, and then 45 specific points. [Reading:]

I am a Democrat. I believe in the platform adopted by the Democratic Party at Chicago in 1932. I voted for President Roosevelt. I believe, on net balance, in the objectives of the administration, as I understand them; I do not believe in the methods by which certain of those objectives have been sought.

The President has stated that criticism of any portion of the "new deal" is welcomed, so long as that criticism be honest and constructive toward the National Recovery Administration. It is not for me to say whether my criticisms are sound. I believe them to be so. But one thing I can say: I know the N. R. A., from long months of days and nights spent within it.

I heard the National Recovery Administration described this summer by a number of its leaders. The occasion was the session of the University of Virginia's "Institute of Public Affairs", where I happened to be leading one of the round tables. Those men in N. R. A. are fighting a battle; they have my admiration. They are my friends. Their description was as honest as could be given by any group of men whose official position inevitably rendered them defenders and advocates. But what they pictured was more nearly the N. R. A. that they and I had hoped for during the early days. And that is not N. R. A.

It is utterly distasteful to me to make this analysis of the Recovery Administration. Yet, as I see it—

And I can say that it is no picnic for me to be here today—

Yet, as I see it, to refrain from doing so would be unpardonable. I sought no contact with the Administration, but in August 1933 received a telegram urging me to come to the N. R. A. for a month. That period was extended at the request of my superiors; it became necessary for me to return to my own work at the beginning of June 1934.

The day I arrived in N. R. A., I expressed the willingness to accept any assignment at any time; to the best of my knowledge I did so until the day I left. My one reservation was the privilege of telling the truth as I saw it. This analysis contains nothing that I did not say to my superiors within the Recovery Administration. The official transcript of the general code conferences in Washington last March will show that upon that occasion in the presence of General Johnson and under his cross-examination as well, I publicly questioned the soundness of N. R. A.'s economic policies. My present action is distasteful to me, as was that.

The country is beginning to see, though I doubt whether the General yet realizes it, the seriousness of the crisis confronting the N. R. A. The Recovery Administration will become a distinct political liability to the Democratic Party unless the situation is remedied. If there is anything for which the American voter possesses an inherent dislike, it is a huge, cumbersome, incompetent bureaucracy whose actions threaten to retard the restoration of prosperity. Transcending that consideration, the really important thing is that this Nation should not be asked needlessly to endure the N. R. A. of today.

My position was thoroughly clear before I was ever engaged by that committee. It has been clear every day since then.

Senator BARKLEY. Are you reading a statement that you prepared for the committee, or some statement that you have made heretofore?

Mr. HETTINGER. I am reading an analysis of last summer which brings out 45 points, within a minute or two, which I want to use as the basis for the discussion of N. R. A.

On every clear-cut test, the N. R. A. has wobbled.

It has no price policy other than opportunism. In theory, having burned its fingers and those of the country, it is against price fixing, save possibly in the fields of wasting natural resources and natural monopolies. But it does not know how to undo what it has done. Its vacillation on price policy alone during recent months would be sufficient to condemn it.

That analysis made last summer is just as true today. It wobbled all through 1934 on the price policy. It held its hearings again in January of this year; it promised the prompt announcement of a policy and action. Here we are the first of April and no action, and with N. R. A. as it stands, having created so many vested interests, vested interests on the part of industry, vested interests on the part of labor, vested interests on the part of code authorities, and vested interests on the part of N. R. A. personnel, there is, as I see it, no conceivable way that we can pull out those vested interests.

Senator BARKLEY. Let me ask you—you say that is from an analysis which you made last summer?

Mr. HETTINGER. Yes.

Senator BARKLEY. For whom did you make that analysis?

Mr. HETTINGER. I sent that analysis to the New York Herald Tribune, and I think I might in fairness say that I did it because I believed that I should do it. I declined compensation for it, because I felt that would have been blood money, and I asked them to turn the proceeds into their Christmas fund, so that directly or indirectly I think I received nothing out of it.

Senator BARKLEY. Did you make it at their request, or did you make it on your own responsibility?

Mr. HETTINGER. I made it on my own responsibility and sent it down to them with no idea as to whether it would be published or not published.

Senator BARKLEY. Did you have any connection with this committee that you now represent at the time you wrote that?

Mr. HETTINGER. I had no connection with the committee. I was just simply a private citizen doing something that should be done.

Senator BARKLEY. You had severed your connection with the N. R. A. at that time?

Mr. HETTINGER. I had severed my connection with N. R. A. the 1st of June. This is dated the 9th of September, but within the N. R. A. I think that I had taken substantially the same policy, and if you will look at the code hearings of the first week in March, I believe you will find, I know that you will find, there, that I questioned the soundness of the economic policy of N. R. A.

Senator BARKLEY. Let me ask you—I want to get you identified a little better. What is this committee; who selected it, and what was is formed for?

Mr. HETTINGER. This Durable Goods Committee, the Durable Goods Industries Committee, was formed approximately at the close of the first week in March 1934, at the request of N. R. A., to gather together, I suppose it would be fair to say, the heavy industries of the country in the light of the material presented at that code hearing, to make recommendations which might assist in recovery and reemployment, and those recommendations were made in the report filed with the President under date of 14th of May 1934, and then at the request of the heavy industries, the committee has continued. Does that make it clear?

Senator BARKLEY. How many members of the committee are there?

Mr. HETTINGER. Of the committee itself, approximately 15.

Senator BARKLEY. How were they chosen?

Mr. HETTINGER. They were chosen, I believe, first, by a group of the heavy industries present at that code conference, and then later, in either the late summer or early autumn, before I had any connection with the committee, there was a group conference of the heavy industries called. The committee reported to them approximately what had been done, and asked whether they should call it a day, or continue. The sentiment of the heavy industries was that they should continue, and the committee was very slightly modified in order to make it more representative and has continued to this day.

Senator BARKLEY. Is the heavy industry as a whole organized? Is there any trade organization that covers the whole group?

Mr. HETTINGER. I think not. This committee has the definite participation through councilors selected from somewhat over 100 heavy industries. This committee is a temporary committee that wants to fold up just as fast as it feels that we are really on our way out of the depression.

Senator BARKLEY. When did you become its secretary?

Mr. HETTINGER. Approximately the first week in December.

Senator COUZENS. Last year?

Mr. HETTINGER. Yes, sir.

Senator COUZENS. So you were not with the committee when it protested against the passage of the Securities Exchange Act, were you?

Mr. HETTINGER. No, sir.

Senator BARKLEY. Did you sympathize with that protest?

Mr. HETTINGER. To be perfectly frank, I was working right along and really did not know that they had protested, but I can state, because, as I said, I want all of the cross examination in the world, I can state my own feelings very briefly there.

At this moment I am a heavy goods man, and sincerely so. I believe that in our economic picture today we are caught in a vicious circle that prevents the attainment of the President's more abundant life. That vicious circle comes down about to this: We have 10,000,000 unemployed, in round numbers, and 20,000,000 on the relief rolls. Therefore we have social, political, and economic instability, and therefore we have what is believed to be the need for a quarterback philisophy, which I would term an effort at enlightened opportunism, that is, the difficulty of rigidly defining policies far ahead.

When you have that, you have a premium placed upon short term commitments, and a heavy retarding influence upon long-term commitments. The chain-store operator, turning over his inventory rapidly, can make a commitment, because his cash goes out, he turns over his inventory, and his cash comes back; he can view it again and decide how to use it.

With a long-term commitment, the moment that you spend your cash for a durable good, machinery, brick, mortar, or what not, you are practically taking a mobile cash fund that can be used in any direction offensively or defensively—you can use it for your pay-roll purposes, you can use it for taxes, you can use it for fixed charges; you can use it for any sort of commitment—and you are putting it into something that immediately becomes a liability instead of an asset, insofar as you can use it. The moment you have bought a machine, it is a liability; you have given, as Bacon would put it, "hostages to fortune." You have to pay interest on it, you have to pay taxes on it, and so forth and so forth.

Under conditions of uncertainty, we find inevitably a defensive psychology where men hesitate to expand. Mr. Weir is doing that in the National Steel, Mr. Ford is doing it, but there is a hesitancy about doing it.

There are roughly of our unemployed today, 1 man in 8 in the consumer goods industries; 3 men in 8 in the service industries; 4 men in 8 in the heavy industries, and by an large the service industries are

linked to the heavy industries. The railroads, for instance, would probably be the largest of the service industries. Their crying need is for heavy tonnage.

With that unemployment in the heavy industries, you have it in the service industries. I will state for instance, one particular group of just four railroad classifications, if I can recall them—minerals, ores, sand, clay and gravel, and lumber, and its products. In those four classifications, you have had a decline in gross revenues from the 1928–29 average to the 12 months ending June of 1934, and the figures would be essentially the same were we able to carry them down to date, of something over $800,000,000.

Those industries are starving for tonnage, and it is my belief that the N. R. A. and the A. A. A., granting the finest of motives, attempted to curtail production in this country, and are leading in part to the railroad crisis; but following around with that unemployment in the heavy industries caused by the industry's hesitancy to make long-run commitments, you have a continuation of the unemployment, the 10,000,000 unemployed and the 20,000,000 on your relief rolls, and the economic and social and political uncertainty which forces the quarterback philosophy.

You have gone around your circle, and you can go around it as often as you want, but you are stuck there until you cut through. You will cut through when you get long-range confidence.

Now, Senator, to come specifically to your question——

Senator BARKLEY. Yes, I have to go to the Senate. I would like to get an answer.

Mr. HETTINGER. All right. I believe that until the capital markets of the country are reopened, and by that I mean new securities issued that will put men to work, the proceeds of them, we have not got our vicious circle cut. I recognize, as well as anyone else——

Senator GEORGE. We will have to get the answer shortly now.

Senator COUZENS. We cannot get an answer.

Senator GEORGE. You may come back to the District Committee room this afternoon at 2 o'clock. Dr. Blaisdell will be on, but after he is finished—perhaps we have one other witness—your testimony may be resumed.

(Whereupon, at 12 o'clock m., a recess was taken until 2 p. m., of the same day, at the District Committee room at the Capitol.)

AFTER RECESS

(The hearing thereupon resumed at 2:10 p. m. of Monday, Apr. 1, 1935, at the District of Columbia Committee room, the Capitol.)

The CHAIRMAN. The committee will come to order. Dr. Blaisdell, please proceed where you left off.

STATEMENT OF THOMAS C. BLAISDELL, JR., DIRECTOR, CONSUMERS' DIVISION, NATIONAL EMERGENCY COUNCIL—Resumed

(The witness having been previously duly sworn, testified further as follows:)

Mr. BLAISDELL. Senator Harrison, at the last hearing at which I was present, Senator King, who was in the chair, asked that I attempt to secure a copy of the study or report made by the National Recovery Administration in regard to the functioning of Executive Order No.

6767. I transmitted that request to the Board and received the information that the request had already been transmitted to the Chairman of the National Recovery Administration and that he had written to Senator King, as follows:

MARCH 29, 1935.

I understand that you have requested a copy of a report made on the operation of Executive Order No. 6767. There is a slight misunderstanding about this matter which I would like to clear up. According to the provisions of Executive Order No. 6767, the National Industrial Recovery Board was directed to have a study made of the effect of the order and then make a report to the President. A study has been made and the board is preparing a report. This will be ready shortly and transmitted to the President and I am sure that I can arrange to have it released immediately thereafter so that a copy of the report can be transmitted promptly to the Senate Finance Committee.

The CHAIRMAN. That report has not yet gone to the President?

Mr. BLAISDELL. Not as I understand the letter.

The CHAIRMAN. That is the order which gives a leeway of 15 percent?

Mr. BLAISDELL. Yes, sir; that is the order, Senator.

The CHAIRMAN. We got the impression that the report had been sent to the President.

Mr. BLAISDELL. Senator Black also asked that such material as we had in regard to the uniform bids and the coercion in connection with the prices of fire hose be submitted to the administration. Those materials have been prepared and are ready for submission.

In connection with this material that I submitted, I was using the case as an example for a number of things.

The first thing was that uniformity was not uncommon prior to N. R. A., and N. R. A. cannot be charged with the full responsibility for such actions as may have taken place in that connection.

The second point that I wanted to make in that connection was that probably with that expansion of the open-price systems, probably there had been some increase in uniform bidding practices, and that this would be true irrespective of whether there was any coercion involved.

Third, that it was because of N. R. A. that the widespread nature of this practice gradually began to be apparent; that while it had existed, we were not aware of the extent of the practice, and it has become apparent that we are probably in better position to deal with it today than we were before.

Fourth, that the existence of the antitrust laws did not prevent this kind of practice. Whether it was violation of the law or not, it was there, and whether an action brought under the antitrust laws could be upheld in that connection, I do not know. There are legal questions galore, I dare say, in that connection. Whether anyone could be held responsible or not, I do not know. I have been concerned very much with the existence of the thing, and whether it is possible to find any way to deal with it, I just feel that the evidence available seems to indicate that the antitrust laws were not sufficient.

That when these actions became apparent, that the President issued an order in order to provide leeway under any code provision for such industry or bidders as cared to bid below his filed prices, to do so, so that there was at least opportunity and no possibility that the charge could be made against the N. R. A. after the issuance of the Executive order that N. R. A. was conniving or assisting in this type of practice.

Finally, that it is important that some further method be found for dealing with this type of practice.

The CHAIRMAN. It has developed this morning, Doctor, by witnesses, that the secretary of this code administration, after the order had been issued allowing a flexibility of 15 percent, that influence was exerted and notice was sent out that this man who had made the bid lower than the others should not be permitted to buy the material. That was done after the Executive order had been issued.

Mr. BLAISDELL. Yes, sir; I did not mean to sidestep that fact.

The CHAIRMAN. I do not think there is any defense for that man doing that. That is my opinion, from what I have heard so far.

Mr. BLAISDELL. I do not think anybody would care to defend the practice. But the point I am going to try to make is that if we are going to charge N. R. A. with responsibility for this kind of thing, we have got to make a stronger case than has been made yet.

The CHAIRMAN. You can say this: While it was shown that this similarity of prices was submitted before the code was put into operation, yet in the code administration this man who was secretary of the trade association was there operating the code, in large part, and at the same time representing the trade organization, too, which is bad practice, it seems to me.

Proceed, please.

Mr. BLAISDELL. My own feeling is that as a result of this order and as a result of what N. R. A. now knows, we are probably closer to dealing with the problem, and that methods can be found to deal with it provided that we go ahead with the program as has been laid down. That is the direction in which N. R. A. has been moving—how to deal with these problems rather than simply push them aside and say, "Well, let somebody else take care of them."

Senator HASTINGS. Is there any way to deal with that except to have it definitely provided that it shall be unlawful for the members of this industry to agree on a price? Is that not the only way?

Mr. BLAISDELL. I believe that that has been unlawful.

Senator HASTINGS. It is not unlawful under the N. R. A., is it?

Mr. BLAISDELL. I believe it has been unlawful as far as the N. R. A. is concerned.

Senator HASTINGS. How do you reach the conclusion, then, that we are approaching a solution of the thing?

Mr. BLAISDELL. I think the first step in a solution is knowing something about the thing, which you have not known up until today.

Senator HASTINGS. Up until when?

Mr. BLAISDELL. Up until very recently. The Executive order was the first recognition of it.

Senator HASTINGS. That was 9 months ago, and it does not seem to have improved the situation any?

Mr. BLAISDELL. I am inclined to think it has improved the situation in probably a great many cases. I cannot cite you cases at the moment, but I dare say if we were to bring our purchasing agents before you, we could very well find instances where, as the result of the order, there had been bids submitted below filed prices.

Senator HASTINGS. Would that be an exception, or do you think that has been the general rule?

Mr. BLAISDELL. My judgment would be that it is the trend. There is a possibility here at all times of dealing with the matter in

an administrative way. The very fact of publicity of this type of thing is an important point. Where it is known and where pressure can be shown to have been applied, I suspect that you tend to get rid of that kind of thing.

The CHAIRMAN. Is this the most glaring case that has come to your attention?

Mr. BLAISDELL. This is the most glaring case that has come to our attention; yes, sir.

Senator HASTINGS. I do not see how the publicity could have been avoided. These were public contracts, contracts for municipalities, and they must have been published in all of the newspapers of the country, or at least the local papers of that particular city, showing that these people were all putting in exactly the same kind of a bid. I should think if making the thing public had anything to do with it, it would have corrected the thing long ago.

Mr. BLAISDELL. Well, there is such a thing as things being public without their coming to general notice. I think you would agree with that, Senator. I have been submitting to the committee here public documents that have been available, some of them, for a great deal more than a year.

Senator HASTINGS. I agree with the general proposition that the administration of N. R. A. has succeeded in getting published what they wanted published and kept out a lot of things that they did not want published.

Mr. BLAISDELL. These statements were made at public hearings, Senator. Most of the material which I have presented.

The CHAIRMAN. As a matter of fact, there is so much happening down there, it has been impossible for the papers to have carried everything.

Mr. BLAISDELL. There is another point that we might stress here, and that is, that had there been public representation on this code authority, probably we might have had a different type of action that the characteristic set-up of code authorities without, in my judgment, proper public representation, has probably contributed to.

Senator HASTINGS. Is it not true that the administration was represented on nearly every code?

Mr. BLAISDELL. I suppose, in a general sense, yes, Senator; but in a practical sense I do not believe it has gone nearly as far as the present tendency of N. R. A. is to require.

Senator HASTINGS. I suppose practically the industry picked the public man as well as their own men?

Mr. BLAISDELL. I think that is hardly accurate, Senator.

Senator HASTINGS. I expect it is exaggerated a little. [Laughter.]

Mr. BLAISDELL. In a good many cases, the public representative may have been an administrator in the N. R. A. who had a lot of codes to watch and could not have been actively taking part in all of them.

Senator Gore also asked that if there were other instances of this kind that we had a record of, it might be well to put them in the record. I have here some documents which were submitted to General Johnson and later made available, and from those I would like to read very briefly and to indicate the contents of those documents as I submit them for the record.

This if from a document submitted to General Johnson on February 19, 1934, from the Consumers' Advisory Board. The subject is, Suggestions for Code Revision.

The conclusion of the first topic which is—

The effect of the recovery program on purchasing power—

was that the—

charts prepared by the staff of the Consumers' Advisory Board, copies of which are attached, indicate that while there has been a net increase in consumers' purchasing power since the inauguration of the recovery program, rising prices at retail have largely offset the increased money income of wageworkers and farmers. The charts are necessarily based on incomplete information, and do not attempt to isolate the various elements of the recovery program, such as the N. R. A. and the A. A. A., which have affected incomes and prices.

We simply took the total net effects.

Then further:

Other elements in the general price situation, not indicated by the charts, appear to the Board to present certain dangers. The first is the fact that retail prices have not yet fully reflected the price increases of the wholesale markets, so that a considerable number of new price increases may be expected in the spring. Retailers assure us that such will be the case and no evidence has come to us to suggest the likelihood of counterbalancing decreases. The second is that unless the standards for wages and hours are decidedly changed the increase of wages and employment required by the codes lie mostly in the past; and that, since inventories have been fairly well built up, the growth of pay rolls is not likely to continue unless there is further growth of the final consuming market. A third element is that the average purchasing power per employed industrial and commercial worker has been decreased by rising prices, as indicated on chart II. This means that some of the gains of the reemployment program have been made at the expense of the previously employed, and emphasizes the necessity of following the injunction which you gave to the National Retail Dry Goods Association, in your New York address of January 18, to keep prices down.

Then, to indicate some of the difficulties that have come as the result of price-fixing it states:

The evidence indicates that arrangements to fix uniform prices have been made in the case of numerous products, sometimes locally, sometimes nationally, sometimes with code sanction, and sometimes without. Cases in point affecting cement, chemicals, electrical equipment and supplies, ice, lumber and building materials, machinery and tools, office furniture and supplies, petroleum and supplies, rubber products, scientific apparatus, steel and fabricated-metal products, and a variety of items which will be seen in appendix A.

Further:

We have reason to believe that these products represent only a small part of those affected by uniform price fixing. We have received a number of letters, expressing the belief that uniform price fixing is part of the established order under N. R. A.

Notice that this was a considerable period ago.

Senator HASTINGS. Have you any figures showing the increase in the price of these products manufactured by these various industries anywhere in your memorandum?

Mr. BLAISDELL. I think there is some very scrappy information. There are various reports that have been issued by N. R. A. which deal with that in much more detail than I can. Those reports are public documents issued by the Research and Planning Division of N. R. A.

Senator HASTINGS. I suppose part of the job of your particular division would be to find out whether there had been a tendency to increase the price to the consumer, and I should think that you would

be able to give us some details of that increase in the important industries.

Mr. BLAISDELL. The basic function of the Consumers' Board has been not to carry on that type of research, which is a function of the Division of Research and Planning. We have used the material which they have made available, and that is the reason I cite those reports as more detailed than anything that I might have. It would seem to me that the proper procedure would be to ask that those reports be made a part of the record, if you wish them, Senator. I do not wish to take responsibility for materials that we have not prepared.

This report of February 19 further states that there is a—

tendency in some industries to forget the recovery program in their own interests, and this is strengthened by any arrangement which makes the determination of prices a matter of agreement among the members of the industry.

In regard to the open-price systems, the next heading it states:

The recent hearing on price changes produced a considerable volume of evidence that open-price systems are facilitating uniform price-fixing.

More detail is given in the appendix.

The next heading is the provision against selling below cost, and it states:

As these provisions have been written in certain instances, however, they provide, in effect, for relatively high and uniform prices for industry as a whole. This is done by basing prices upon average costs which are necessarily higher than the costs of the more efficient producers. Codes whose cost provisions are of this character, together with the nature of the standard cost specified include the following:

Average cost, average overhead, fair and reasonable or allowable costs, lowest representation or lowest reasonable cost.

I am not citing the specific industries in each case.

In addition, it goes on:

It has recently been made a general N. R. A. policy to permit the code authority, when it finds its industry is confronted by an emergency, to determine "the lowest reasonable cost for the products of this industry."

It is provided further that such determination may serve as a basis for minimum prices, sales below which constitute an offense against the code. This policy, in addition to making emergencies attractive to industry, has the effect of permitting the establishment of uniform minimum prices in all cases where it is adopted by industry.

As to output limitations:

We feel that the application of such limitations is dangerous unless carefully supervised. General restrictions upon machine hours inevitably have the effect of forcing efficient producers to follow the pace of the less efficient and thereby increase the consumers' bills disproportionately to the increase in purchasing power through expanded wage payments.

And further on this topic:

The effect of leaving decisions of this sort to private interests or of limiting of public action to consideration of plans submitted by them has been, as we said, to encourage unwise restrictions of output and to allocate that output among producers upon unwise principles. Quotas assigned to the industry by the code authorities have been set at the expense of employment, when it appears that a healthier alternative would have been to seek larger sales and increased employment through low prices. * * * The principle generally followed, in dividing the limited output among the available producers, gives each producer a proportion of the market equal to his relative producing capacity. The effect of such

procedure is to limit the production of those efficient concerns whose ability to supply products of good quality at low prices has given them operation relatively near their capacity, and to encourage, at their expense, the continued existence of concerns which could not otherwise survive. In lumber, this practice went so far that even though total production and sales were declining, establishments were revived which had been shut down for 2 or 3 years. Such a division of the output of industry keeps production costs high and creates a situation in which members of the industry need to overcharge the consumer in order to survive.

The next heading is "Basing point, zone freight systems and other systems of dividing the market." The report states:

A number of the approved codes provide for basing point systems, zone freight system, and similar arrangements * * * Their history is one of grave abuse.

Then we go on to state that the facts are not available for showing this thing in detail:

We are willing to be guided by the facts when they become available. We feel that the present danger of having prices outstrip increased wage payments makes it peculiarly undesirable to experiment further with price systems of this general type.

The next heading is "Fixed price differentials between different classes of customers", and states:

The formidable drive to embody in N. R. A. codes fixed-price differentials between different classes of customers has been motivated by two major and somewhat conflicting desires. One is the desire of intermediate distributors, such as jobbers and wholesalers, to operate upon a margin protected by law from the competition of more direct methods of distribution. The other is the desire to avoid having their prices driven down by the bargaining strength of large buyers who demand discounts greater than can be justified by any lowering of costs attendant upon filling their large orders.

It seems desirable to prevent very large distributors from clubbing unreasonable discounts out of manufacturers, but it is very undesirable to freeze the present system of distribution by setting up arbitrary price differentials to apply to different stages of distribution.

Here is one of the most difficult problems that we have to decide. Historically, large manufacturers have been able to secure good bargains from competition between buyers. Now you have the development of the large distributor who has the large power, and who is the large buyer; the chain store, the mail-order house, and so forth. Is it possible or probable that the development of these large distributing outlets has reversed the picture, and you may get your tendency to monopoly, if you please, from the large distributing unit rather than from the large manufacturing unit as was previously the case. The problem is a very difficult one to solve. I have not heard the solution yet.

Then the general heading of "Price-fixing in codes", stating:

A limited number of codes in which it has been provided that minimum prices are to be fixed by authority of the code do not differ essentially from some of the codes where there is no mention of such an arrangement. By using an average cost as the basis of the minimum price to be charged by the industry and coupling with this some standard form of freight charges, much the same result is obtained as though uniform prices were authorized in the first instance. Consequently, the observations previously made in discussing cost provisions apply to the codes where uniform price fixing is explicitly authorized. An additional objection to price fixing in accordance with explicit code provisions is that the prices set tend to be more rigid than those attached to some cost basis, and also tend to be set without any explicit accounting of the cost elements involved. This was notably true of the code for the cleaning and dyeing industry where, given an authorization to fix minimum prices representatives of the industry proceeded post haste to set a schedule of such prices without making even a plausible pretense that they had analyzed the costs in the industry.

Now I am leaving out quite a good deal and it continues:

Therefore, we feel that such minimum price fixing should be eliminated from all codes, there being no emergencies at this time which would justify it in the industries where it has been granted.

The CHAIRMAN. I did not understand that last. You say that price-fixing should be eliminated?

Mr. BLAISDELL. Yes, sir.

The CHAIRMAN. In all codes?

Mr. BLAISDELL. From all codes. The statement is that we feel that such minimum price fixing should be eliminated from all codes, there being no emergencies at this time which would justify it in the industries where it has been granted.

The next heading is "Quality standards and informative labeling."

Senator BARKLEY. Going back to that last statement. If codes are to provide for minimum wages and maximum hours in any industry that might be covered in any new law that we might enact or any amendment of the present law, and if they are required to live up to those minimum wages and those hours, would you then leave them free to cut prices below the cost of production or to resort to any method by which they can injure a competitor? What is your idea about that?

Mr. BLAISDELL. Senator, we have felt that the setting of the minimum wage rates and maximum hours places any firm on an equal competitive level with any other firm, that part of the risks of competitive business involve those risks, and as long as everyone has to do that on the same basis, all that we have done is to shift the level of competition. That if a business cannot survive under present conditions as a result of a number of competitive factors, the recourse is well known—the bankruptcy courts. That is part of the risks of business.

Senator BARKLEY. I know that, but nobody likes to rush into that avenue of escape. Do you advocate the elimination of the minimum wage and maximum hour provisions from codes?

Mr. BLAISDELL. No, sir.

Senator BARKLEY. You are for them?

Mr. BLAISDELL. Yes, sir.

Senator BARKLEY. Admitting as I do the general undesirability of price fixing, in the event that all of the component parties of any given industry enter into the codes or are taken into the codes with respect to minimum wage and maximum hours, and admitting that some one of them might be willing to take a chance on underselling, and it might be some local geographical or transportation situation which can give them a little leeway there, would you do nothing about that?

Mr. BLAISDELL. Those situations, Senator, exist irrespective of whether there are minimum wages.

Senator BARKLEY. Of course.

Mr. BLAISDELL. All I would feel would be that we have simply raised the level of competition and prevented the taking of that out of the workers who probably are already paid too low. The danger has been that that is exactly what has happened, that when a person was at a disadvantage, he tended to take it out of labor, and labor took the risk that was properly the risk of the business man.

Senator BARKLEY. I do not care to pursue that further at this time. Thank you.

Mr. BLAISDELL. One of the points which the Consumers' Advisory Board has made consistently has been that one of the places at which you can establish fair competition was in making available to consumers and customers the quality of the goods which is sold; that, under present merchandising practices, unfair competition may come about fully as much by chiseling on the quality as by chiseling on the wages or chiseling on the prices; and that, if you are to have fair competitive prices, the quality of goods ought to be known. That is a very difficult technical problem.

It is one of the problems which the code mechanism is unusually well suited to deal with. If you can get agreement within an industry as to the types of goods which are to be sold, and everybody knows what those types are, and that is all out in the open, then the tendency to take advantage of the mislabeled goods tends to disappear; you get fair competition on quality, and you throw your competition open to price where it more properly belongs, we feel.

The next heading is "Code administration." There it has been our conviction that if we are to have code authorities, there must be on those code authorities representatives of the public with proper financing and proper powers so that they may be continually aware of what is going on in the code authority and may act as a proper check on any actions that may seem to be improper on the part of that code authority.

Finally, the "Significance of code revision"—you remember that codes are under revision all the time—

> The N. R. A. has given and is giving much impetus to the organization of labor. Inherent in this development is the chance that as each separately organized industry seeks to promote its own interest, the broad interest of the community of business men and workers in a proper balance among industries will be obscured; and the further chance that the interests of consumers who are not eligible to enter a trade association or labor group will be sacrificed for lack of organized defense.

Hence our suggestion of the necessity for proper consumer representation and financing on code authorities.

As an appendix to that document, which I submit for the record is some of the material to support the contentions therein. First is appendix A in which we cite samples of uniform bids. I will simply run down the list of some of the commodities: Cement, chemicals, electrical equipment and supplies, envelops, ice, lumber and building materials, machinery and tools, office furniture and supplies, oil and fuel, paper and paper products, plumbing fixtures and supplies, rubber, scientific apparatus, steel and fabricated metal products, and a series of miscellaneous items.

These classifications are purely arbitrary. No attempt has been made to identify particular products with the codes having jurisdiction over them. I simply cite them as instances that came to our attention.

Appendix B is a list of approved codes containing provisions leading directly or indirectly to artificial determination of prices. This list covers the first 180 codes approved. There were 80 codes providing for open prices with waiting period.

(Matter referred to will be found at conclusion of Dr. Blaisdell's testimony.)

The CHAIRMAN. How many of those codes have since eliminated price-fixing?

Mr. BLAISDELL. In a great many of these codes, Senator, the exact provisions, which made it possible to fix prices never went into effect at all. They provided for power to establish prices on a basis of a cost-accounting system which had to be first approved in the N. R. A. Many of those, in fact most of them, have never been approved. The exact number I do not know. I have not any figures on that.

Mr. EDWARDS. Somewhere around 30 to 40 cost systems have been approved, I believe.

Mr. BLAISDELL. The information is that some 39 cost-accounting systems for the purpose of establishing prices, have been approved. That is a comparatively small number as compared to the total number of codes that have permissive provisions in them.

The CHAIRMAN. Can you put into the record those which you have in mind? Just supply the record in your testimony. There are some of those that since then have eliminated price-fixing, have they not?

Mr. BLAISDELL. Yes, sir.

The CHAIRMAN. I wish you would supply the record with that, if you can.

Mr. BLAISDELL. The most important of those codes is, of course, the lumber code. We will supply the record with that list.

Nine codes providing for open prices without a waiting period.

Then a whole series of codes containing provisions against selling below cost. I won't go into the details of those.

The CHAIRMAN. That provision is not in all of the codes?

Mr. BLAISDELL. Not in all of the codes; no, Senator.

Then the codes providing for restriction upon the installation of new machinery or other extension of industry capacity, 29.

Codes providing for allocation of production, 4. And they are four rather important industries, lumber and timber, petroleum, iron and steel, and glass containers.

Codes providing for restriction of machine hours, 29.

Codes with basing-point system, 7.

Codes with zoning systems, 6.

The CHAIRMAN. On each of those classifications, have you the names of those codes?

Mr. BLAISDELL. They are in the list here, Senator. They have been submitted for the record.

The CHAIRMAN. Yes.

Mr. BLAISDELL. Codes with zoning systems, 6.

Codes with freight equalization and other systems of delivered prices, 33.

Codes providing for fixed price differentials between different classes of customers, 23.

Codes providing for resale price maintenance, 16.

Codes permitting agreements to secure resale price maintenance, 2.

Codes that have fair practice clauses that make maintenance possible, 1.

Codes providing for some degree of price determination by the President, code authority, or other agency, 17.

Codes permitting code authority to establish price differentials, 6.

That is the end of appendix B.

Then appendix C contains copies of some letters of examples of pressure on concerns quoting lower than standard prices.

Senator BARKLEY. Pressure by whom?

Mr. BLAISDELL. Members of the industry who put pressure upon other members of the industry not to go down in their prices. I simply will read an example taken from a public hearing. This was a public hearing on the cast-iron soil-pipe industry, and Mr. C. A. Hamilton represents the Alabama Pipe Co., of Anniston, Ala. [Reading:]

Deputy KING. Do you think there are members in your industry who, if they had a 2,000-ton order offered them would likely file a more attractive price if it was necessary to get the business?

Mr. HAMILTON. We have had to sit up at night with them to keep them from doing that, but they have not done it yet.

Deputy KING. You mean you have used pressure on them to keep them from doing it?

Mr. HAMILTON. No, sir; not pressure, but we have tried to show them the errors of their way.

Deputy KING. The errors on that are in your opinion bad?

Mr. HAMILTON. In our opinion that it would break us down, so that we would be apt to be selling below cost. A man can take 2,000 tons today in the industry, and make a price lower than the fellow who has not got the mechanical operations. He could take a 2,000-ton order and quote a lower cost than the other fellow that has got less carloads and carload shipments; piecemeal orders we call them.

Deputy KING. Then, you admit in the operation of this open-price structure that if a manufacturer in your industry files a lower price you would sit up nights with him trying to get him to come up?

Mr. HAMILTON. I say that we have done. I do not think we sat up all night, but we lost some time on it.

Deputy KING. I admire your frankness, Mr. Hamilton.

Mr. HAMILTON. Yes, sir; we are trying to hold this industry together, Mr. King, so that we will be above cost, and one man can't get an advantage so that he can quote a lower cost than the other man by going up and publishing his price and taking a big order against the other felllow and establishing a lower cost.

Deputy KING. Yes; but we are concerned in the operation of a cost that permits price fixing, and permits members of an industry to get together and arrive at a price that will be at variance with public interest in the matter.

Mr. HAMILTON. I understand that, sir; but the life of this industry depends on trying to get above costs for our goods.

Deputy KING. I am not getting above cost.

Mr. HAMILTON. I will say cost then; let me change that and say cost * * *.

Deputy KING. Suppose your cost is $30 a ton and your filed price is $40 a ton, and the manufactuer files a price of $35 a ton, do you think you are justified—this is above his cost—in sitting up nights, trying to get him to go back to $40 a ton?

Mr. HAMILTON. I do, sir, if he is going to be able, with that large order we have mentioned, to make a better cost than anybody else in the industry.

Deputy KING. Is cost such a variable in your industry that one order of that kind can influence the cost?

Mr. HAMILTON. Today, yes; very materially, sir."

I am reminded to call to your attention that this was April 4, a year ago.

Then there are a number of cases of the use of pressure to fix prices. This document was brought out on April 18, 1934. We were concerned primarily with the practice, not who did it in those cases, and so in these illustrations that were brought together, all names were deleted. I simply will cite one instance of the materials, for your information. [Reading:]

Under pressure a small manufacturer unwillingly raised his prices. (The code provides for an open-price system with a waiting period and for no sales below individual cost except to meet competition.)

Letter of April 3, by small manufacturer:

"A meeting was held in which I did not attend. The night the meeting was held, one of the men who had been in attendance at the meeting called me on the telephone, and asked me to meet him for a little talk. I told him that I

would be busy until late in the evening. He said that did not make any difference to him—that he would meet me at any time, so I met with him. He talked about general things, and eventually got around to talking about prices. We talked about an hour, and I would not commit myself as to my intentions regarding filing prices. There was considerable pressure put on me then. I was then urged to meet with some other men on the next day, and I did so only because pressure enough was put on that I did not want them to think that I was not willing to meet with them and be a good sport.

"We met the following morning, and for several hours these men talked with me, explaining how a small manufacturer in the steel business was taken to Washington and his prices forced into line with others, etc., and how this and that concern had failed only because they did not get high prices for the goods sold. When we parted that day, I had not committed myself to file prices as they intended to do, nor did I on the day the prices were filed [date].

"My first filed list apparently was the only one different from the others. As soon as the prices were available to one another, I received telephone calls from some of the manufacturers and they were very much disappointed because my prices were not the same as theirs.

"I based my original price list on one which was used in 1926, and to my mind it was in line with the general line of things as they are today."

Then there is a sample of that type of thing in a considerable number of codes. I submit that document.

The CHAIRMAN. It may go in.

(This document will be found at the close of Mr. Blaisdell's testimony.)

Senator COSTIGAN. Dr. Blaisdell, some of us arrived late at this hearing. What is the document you have been summarizing?

Mr. BLAISDELL. These several documents, Senator Costigan, were records that we made in the Consumers' Advisory Board of various matters that came to our attention in the course of our advisory work and such complaints as became available to us. The material was submitted to General Johnson at that time. We had pushed the matter of endeavoring to clarify policy and to try to secure changes in the administration from time to time.

Senator COSTIGAN. Are you personally in general accord with the conclusion to which you have drawn our attention?

Mr. BLAISDELL. I am not quite clear, Senator, as to just what you mean by the question.

Senator COSTIGAN. Are you personally in general accord with the statements you have brought to the attention of the committee? Do those statements represent the expression of your personal views a year ago?

Mr. BLAISDELL. Oh, yes. We were convinced that here were certain things that we believed were not in accordance with the policies of the National Industrial Recovery Act. That was the reason that we were so continuously urging revisions.

Senator COSTIGAN. Have your views changed since, or are they substantially the same?

Mr. BLAISDELL. My views as to the trend in N. R. A. have very definitely changed since that time. I am convinced that the public hearings which have been held within the last few months and the actions that have been taken by the National Industrial Recovery Board have indicated a realization of what was actually taking place under these provisions, and I have seen a great deal of evidence of a willingness and a desire on the part of the National Industrial Recov-

ery Board to examine these things in the light of factual material which has come to their attention, and I do say that the trend of administration has been definitely in the direction of the very policies that I have been advocating here.

Senator COSTIGAN. If you have not done so, I hope that before you conclude, you will give us a general statement, an affirmative statement, of your own convictions about N. R. A. That need not be done now. I mean when you conclude your statement.

Mr. BLAISDELL. I should like very much to present a summary statement of conclusions, Senator Costigan.

Senator BARKLEY. Let me ask you this: Have these complaints or suggestions contained in these various documents which you are filing as of a year ago been corrected or modified on the part of the N. R. A. from that time until this?

Mr. BLAISDELL. Senator, a great many things have taken place in the last year, and there have been a great many changes in the specific codes. I would say pretty definitely that some of the worst codes have been changed, and there have been a number of minor changes—I mean those in the smaller industries. They are not minor to those industries at all, they are very major to those industries, but from the standpoint of their broader effects, there have been any number of changes in the direction of these policies that I have been suggesting, which seem to us to have been the policies expressed in the National Industrial Recovery Act.

Senator BARKLEY. You understand that the function of this committee is twofold: It is to make an investigation; and it is also to pass on the question of whether we are going to extend N. R. A., and under what circumstances and with what modifications.

Mr. BLAISDELL. Yes, Senator.

Senator BARKLEY. It is of no great benefit to the committee to recite things that began a year or a year and a half ago that have been corrected by N. R. A. itself, except as showing improvement within its own body, if it has improved, as you seem to indicate; and I think that while we are pointing to weaknesses or evils that existed a year or a year and a half ago, if they have been corrected or the extent to which they have been corrected, that ought to go along in the record with it, so that we will not necessarily judge now present conditions of what was true in 1933 or 1934, even.

Mr. BLAISDELL. Senator, I agree with you entirely on that. It has not been with the intention at all of indicating that changes had not taken place. It is because of the first facts which you stated, that this was an investigation into what N. R. A. has been, that I have taken as much of your time as I have in presenting these materials, because they seem to me to point to the problems that we have got to face and face very frankly, if we are going to have an N. R. A. which is in line with the statements of policy that were originally written into the act. And it is for that reason only that I submitted these materials. We are talking of the general effects and the problems that we need to deal with.

Senator COSTIGAN. Did you at the beginning of your testimony make definite recommendations to the committee with respect to possible pending legislation?

Mr. BAISDELL. I submitted, Senator Costigan, for the record, a statement of the policy attitude of the Consumers Advisory Board with regard to changes in the act. That was previous to the act which Senator Harrison introduced the other day, and it indicated general lines of policy which we felt the act should take. I put those in the record already.

The detailed statements which Senator Harrison asked that I submit are being prepared, and if I do not introduce it this afternoon, I should like the privilege of inserting it in the record.

The CHAIRMAN. It will be put in the record.

Mr. BLAISDELL. I have here a further document which is called "Experience with Open Price Provisions of Approved Codes", which was brought together in April 1934, which for the sake of the record I would like to insert.

(The same will be found at the conclusion of Mr. Blaisdell's testimony.)

Mr. BLAISDELL. To bring the matter down more nearly to date, I have here a series of statements, some of which were referred to by Senator King, and at his request I comment on some of them. I have tried not to take too much time with those.

In view of the fact that the Senator has already read into the record a portion of Mr. Keezer's summary statement at the price hearing on January 9, I will not refer to it further, but submit it for the record.

The next statement is the experience with price fixing under the codes, by Corwin D. Edwards.

Senator BARKLEY. Who is Mr. Edwards?

Mr. BLAISDELL. Mr. Edwards is the gentleman sitting beside me. He is the technical director of the Consumers Advisory Board staff.

Senator BARKLEY. A very handsome man. [Laughter.]

Mr. BLAISDELL. His ability has been commented upon before, Senator. This is the first time I have heard reference made to his pulchritude.

Senator BARKLEY. I do not think that can be overlooked. If anybody ever denies that, it is in the record. [Laughter.]

Mr. BLAISDELL. The trend of this statement is in the direction that where authority has been given to various code authorities to have anything to do with regulating prices, the tendency has been both to fix schedules which are out of line with what the community can stand and still have the industry get rid of the volume that is necessary. There are a number of instances cited. I quote:

> Of course, N. R. A. has attempted to prevent the establishment by code of unduly high prices. In the case of lead pencils, in which the code authority was to determine "a fair minimum price", the proposed price schedules submitted to N. R. A. evidently interpreted fairness so liberally as to protect the least competent purchaser. Analysis of these schedules indicated that the proposed prices would have guaranteed by law a profit margin as high in particular cases as 60 percent. In this case the proposed prices were disapproved and the code provision which authorized them was stayed. In other cases unconscionable prices have been greatly reduced by N. R. A. upon review.
>
> Consider certain examples of emergency prices, supposedly based upon lowest reasonable cost, in the retail solid fuel industry. Here, for certain areas, are the

prices proposed by the code authority and the prices eventually approved by N. R. A. after review of the costs:

Region	Proposed price	Approved price	Percent disallowed
State of Illinois (division 25) Trade Area No. 2	$2.45	$2.05	20
Westchester (July)	4.00	3.13	27
Denver	2.19	1.75	25
Knoxville	2.21	1.91	16
Haverhill, Mass	3.43	2.90	18
St. Louis and East St. Louis	2.10	1.87	12
Seattle	4.00	3.50	14
Indianapolis and Marion County	2.40	2.25	7

The influence of N. R. A. was in every case to bring down the prices which were asked.

There are a number of further industries prices. I have not gone into details there, but I will go into another line of discussion, in which it is stated:

In certain industries, prices have been kept competitive by the breakdown of provisions intended to fix prices. Codes cannot force people to spend more than they have, nor enable business men to sell more than customers will buy. Hence the attempt to raise prices by fiat has led to widespread bootlegging of goods in violation of the codes. The bootleggers have found a ready market because consumers, most of whom would have supported the labor provisions of codes, have not seen either fairness or sense in legalized price fixing.

Then there are a number of illustrations.

I call attention here particularly to the fact that it is very difficult to fix prices in any case. Any number of business men have come to me and said, "Let them fix prices, but nobody pays any attention," or "It is so easy to find one man who will not give the price that may be fixed, that the schedules often mean very little."

So that the endeavors to fix prices have often collapsed of their own weight, and there have been notorious examples of that in the lumber industry, which is one of the most glaring. Another is prices which they endeavored to fix in certain retail coal areas.

I submit that document also for the record.

(The same will be found at the conclusion of Mr. Blaisdell's testimony.)

Mr. BLAISDELL. The experience with emergency price-fixing was presented at that time by Ben W. Lewis, a member of the staff, and here I refer only to one case, that of the rubber-tire industry, in which an emergency was declared, and the administration endeavored to assist the industry to establish price levels for various types of tires.

Quoting from that paper:

It is difficult to believe that the tire industry is fundamentally on a sounder basis as the result of its suspension of price-cutting during the past summer. The experiment was characterized by violations of price restrictions, slackening of sales, and strife and bickering within the industry. When, moved by the sheer weight of the administrative burden and the growing volume of discontent, the administration terminated the emergency, not a significant item in the total picture had been openly affected.

It does not do the trick.

Similarly, in the case of cast-iron soil pipe: As a result of a sharp break in prices following a long period of gradual decline, the industry requested and received emergency price protection. After a period of 3 months the protection was removed, and here, as well, without the slightest alteration in the basic structure

of the trade. True, in both cases, the price cutting of last winter has not been openly resumed as yet, but in the absence of any semblance of major change in underlying forces, it must be assumed that those forces are at present in a state only of temporary paralysis induced by enforced inactivity or that the emergency months constituted only a glorified "waiting period", conducing on a grand scale to the very evils which have led to the condemnation of waiting-period provisions in open price plans. The cast-iron soil pipe industry still produces at a bare fraction of its capacity, and the same conditions that permitted and promoted the price warfare of a year ago still obtain in the case of rubber tires.

In other words, the attempts of the declaration of emergency prices does not hit at the root of the problem, and until we go at those roots, price-fixing does not solve the problem.

I submit that statement also for the record.

(The matter referred to will be found at the conclusion of Mr. Blaisdell's testimony.)

Mr. BLAISDELL. The last time I read at considerable length from a memorandum entitled, "Private Price Control and Code Policy", by Ruth Ayres and Enid Baird. I shall not repeat that at this time, Senator. I simply submit the document for the record.

(The matter referred to will be found at the conclusion of Mr. Blaisdell's testimony.)

Mr. BLAISDELL. There is a statement by Mr. W. L. Chandler, another member of the staff, on "Fixing coal prices", in which the following appears:

The price-making powers granted to the bituminous coal industry by the N. R. A. have produced bad results. The most important of these is that prices have risen so high that consumers cannot bear the burden and that the industry's recovery is prevented. The wholesale price of coal went above the 1929 level in March 1934, and advanced each month even during the summer period when coal prices normally decline becuase of the seasonal shortage of demand.

The high price contrasts painfully with low production and low employment.

Senator BARKLEY. When was that made?

Mr. BLAISDELL. That was on January 9 of this year.

Senator BARKLEY. Do you mean that that statement contends that the coal industry has not recovered any under the codes?

Mr. BLAISDELL. There has been, I believe, considerable recovery at the other end of the line, and as you have had some increase in production—this was at the retail end that we were talking about, I believe.

I am informed that I am wrong in that statement, Senator. I would like the privilege of correcting it. 1929 is 100 percent. The price index is 105, wholesale prices 105.6 in November 1934. Employment in November 1934, index, 79.8, pay roll, 58.3 as compared with 1929.

Senator BARKLEY. That is very fragmentary evidence upon which to base any conclusion as to whether the coal industry has been benefited by the codes. I have been told by both the operating and the labor end of the coal industry that on the whole they have been much more prosperous, and some of them even referred to it as a lifesaver for the coal industry. That would not apply to some geographical provisions that may not have been affected by it or did not get in under it, but that is a general statement.

Senator CLARK. Some of them may have been affected very adversely by it.

Senator BARKLEY. That is a general statement that comes to me by both sides in the coal industry.

Senator CLARK. In my State the coal industry reports that all of the coal mines have been shut down as the result of the codes and the employees thrown out of employment, and the employers deprived of any profit they might have made.

Mr. BLAISDELL. I think we can throw a little further light on that by going into some intermediate figures.

Senator BARKLEY. Of course, coal has been in competition with oil and gas ever since oil and gas started.

Mr. BLAISDELL. I think that interpolating some of the intermediate figures, we get a slightly different figure.

Senator BARKLEY. I do not want to divert you on the question. I understood you to say the coal industry as a whole had suffered under the code. That has not been my understanding.

Mr. BLAISDELL. The figure of June 1933, the price index was 85.8, the employment index was 61.3, the pay-roll index was 29.2. When you contrast those figures with the figures of November 1934, you get quite a different picture.

Senator BARKLEY. What was that column you read from? What year?

Mr. BLAISDELL. June 1933 was apparently the low point. But for November you have an increase from the price level from 85.8 to 105.6. You have an increase in employment from 61.3 to 79.8, increase in pay rolls from 29.2 to 58.3.

Senator BARKLEY. Over a period of how many months?

Mr. BLAISDELL. About 17 months.

Senator COSTIGAN. The largest relative increase was in the pay rolls?

Mr. BLAISDELL. It seems to have been; yes.

The CHAIRMAN. What is your reaction and that of your committee, if you know, even though we might eliminate many of these provisions with reference to general codes, but as to coal would it be advisable, in your opinion, to regain control of production and price-fixing with reference to the coal industry?

Mr. BLAISDELL. Our board, I think, has been pretty clear on the coal industry, Senator, that it probably requires a considerable degree of control. That is a natural resource industry, that it has had many more employees than were employed; in fact, some of the estimates have indicated as much as three times as many employees as were necessary in the bituminous fields, and with the price levels at a point at times when even wagon mines were being opened, there is an increased productive capacity at a time when there was a productive capacity entirely out of line with consumption, and that there undoubtedly should be some kind of control in that industry.

Whether it would go as far as price-fixing we doubt, because we feel that price-fixing does not solve the problem, and that we have got to get at the more fundamental organization of the industry rather than just deal with it by saying, "Well, here, now, is a price and this is what the people are going to pay, and settle the thing that way." It does not settle it.

The CHAIRMAN. I am of the same opinion as Senator Barkley, that the coal code has brought perhaps less criticism than any other code that I have heard any discussion about.

Senator BARKLEY. Of course, if the price of coal is fixed at an unreasonable figure or materially above what it ought to sell at, then

the oil and gas and electric power and all these other things that are in competition, will come in and take the place of coal. There is a limit beyond which you cannot go in fixing the price of a natural product like that which has competition from so many sources; is not that true?

Mr. BLAISDELL. That has been one of the difficulties with the attempts to fix prices, that you do get these competitive factors in.

Senator BARKLEY. Certainly it would be difficult if you tried to fix them by raising them very much.

Mr. BLAISDELL. Exactly. That is one of the points that we have made consistently, that where you have that type of thing and endeavor to deal with it simply by raising prices, that you cause a trouble that won't solve the troubles in the industry. You just make more trouble for yourselves.

Our contention here, and it has been carried out in N. R. A., is that where they recognize any prices to be fixed, that they should be established only after public consultation, and N. R. A. in the retail field cut the figures that were established and suggested by the various regions, very materially, and I cited you instances of that.

The CHAIRMAN. Has that been the policy?

Mr. BLAISDELL. That has been the policy. Since I have already gone into that I won't read from this document, which simply tells in more detail the history of that development. But I will submit it for the record.

(The same will be found at the conclusion of Mr. Blaisdell's testimony.)

Mr. BLAISDELL. A very minor industry from the standpoint of the public, and yet a very interesting one, was the attempt to control prices in the mackerel fishing code, where the conclusion was reached that the only individuals who benefited were the mackerels themselves, since not so many were caught and distributed. Price-fixing was tried there, and that is the history of getting rid of the price-fixing.

The CHAIRMAN. Did they make any effort to control any other fish?

Senator BARKLEY. Including the Kingfish? [Laughter.]

Mr. BLAISDELL. I will also submit that paper for the record.

(The same will be found at the conclusion of Mr. Blaisdell's testimony.)

Mr. BLAISDELL. Another type of attempt to regulate has been that of regulating the channels of trade in the plumbing-fixture industry. This is a statement by Mr. Leander Lovell at the same hearing:

> The story of the plumbing fixture code to date is the tale of the breakdown of indirect price fixing. The methods employed were more circuitous than those common to ordinary price control. There were no provisions as in certain other codes, allowing the industry, with a minimum of Government supervision, to set price floors below which no member might lawfully sell. But, equally direct in aim, though less direct in method, the plumbing manufacturers embarked on an attempt at price fixing, calling it "price stabilization", through restriction of the channels of distribution.
>
> They attempted to maintain traditional forms of distribution (in this case the combination of manufacturer-wholesaler-plumber) in order to preserve resale prices and accepted price relationships. The technique of such a scheme involves the favoring, by price or other means, of chosen agents of distribution, and the use of devices to keep out new factors that might not so readily conform to fixed ideas concerning prices and distribution; and the successful operation of such a scheme would logically result in a slowing up of sound evolutionary progress in in the distributive system and in the maintenance of prices at unwarranted levels because of the support of unnecessary distributive units.

The history of that and its breakdown is related:

Prices of plumbing goods, as reported by B. L. S., reached a plateau about September 1933. This they maintained through April 1934. Then the decline! Since the middle of 1934, the deputy's files have served as a spectacular, but accurate barometer of the state of the plumbing-fixtures industry. What began with a few complaints on code-authority discrimination turned, in September 1934, into a landslide of complaints against the code and its enforcement.

The prices of plumbing goods have been falling since April 1934, have reached new depression lows, and the end is not yet.

And in conclusion it is stated:

This story points its own moral. The plumbing-fixtures industry would be well rid of the restrictive devices by which it has sought to consolidate its past position at the cost of denying to itself all chance of growth and development.

I submit that also for the record.

(The same will be found at the conclusion of Mr. Blaisdell's testimony.)

Mr. BLAISDELL. The Effect of Price Control and Price Stabilization on the Construction Industry is a statement by Mr. Hadley at the same hearing. I read very briefly:

Only one thing will bring about increased construction volume by private capital and that is a normal relationship between construction costs and income from rents or real estate values. Either we must wait for all other industries to recover to the extent that rents and valuations will rise and make building possible, or we must allow building costs to seek their natural levels.

To do this, two important steps must be taken:

1. The artificial price-control features of the building-material codes must be removed.

2. The mandatory cost formula in the chapters of the Construction Code must be removed.

I submit that also.

(The same will be found at the conclusion of Mr. Blaisdell's testimony.)

Senator LONERGAN. Does it not get down to this, that there is no substitute for the economic laws?

Mr. BLAISDELL. Well, Senator, economic laws always function through persons.

Senator LONERGAN. Correct. With a million ramifications, world-wide in character.

Mr. BLAISDELL. The ramifications are very, very wide, and the striking thing to me, always, is that one of our dicta is that price-fixing is impossible.

Senator LONERGAN. It has never been a success, has it?

Mr. BLAISDELL. And yet we run up against instance after instance where for a long time at least seemingly human beings do succeed in fixing prices.

Senator LONERGAN. For a short time?

Mr. BLAISDELL. For a time.

Senator LONERGAN. On one good article?

Mr. BLAISDELL. On a good article; sometimes on a good many articles.

Senator BARKLEY. Like cement, for instance.

Mr. BLAISDELL. The result is that our thinking, if we simply talk in the terms of price-fixing, seems to me to become a little confusing, that we do get price regulation. And long before there was any code, in the iron and steel industry, the pricing policies of that industry were such that they tended to maintain a fairly constant level of

prices. At the same time you had terrific fluctuations, both in production and in employment, and yet we would say theoretically that they could not control prices. Well, in the sense of fixing-price and requiring everybody to adhere to it, of course there was no price-fixing. There were policies of dominant corporations that had succeeded in maintaining price levels over considerable periods of time, even when we make allowances for the concession that may be given to get immediate business.

Senator LONERGAN. In your experience with the N. R. A., do you think that an artificial program can be made a success unless everybody involved joins in it?

Mr. BLAISDELL. Well, the words which you have used, Senator, of course, require a negative answer—an artificial program, unless everybody goes along—and then it is not an artificial program any more.

Senator LONERGAN. That is it.

Mr. BLAISDELL. So that you may have a program. If you establish the conditions to make it possible for that program to work out, of course it works out. If you do not, it does not.

Senator LONERGAN. Can you offer anything to take the place of the law of supply and demand?

Mr. BLAISDELL. Of course the law of supply and demand also functions through individuals. If they control the supply, they control the price, and if the Government controls the supply, it can affect the price very decidedly, so that we do not throw out the law of supply and demand but we do regulate price.

Senator BARKLEY. Do you believe that it is more desirable to regulate price, or to regulate the product so that it itself will regulate price?

Mr. BLAISDELL. The second alternative, Senator——

Senator BARKLEY. Assuming that the law of supply and demand plays a part: Take for instance, the cotton, wheat, tobacco, and so forth, where everybody knows we had an unsalable surplus, we had lost the markets of the world, and we either had to decide not to produce so much or go ahead and produce it and throw it on the market to press down the price still further in the domestic market, or just produce it for the fun of it and destroy it. In that case, which was better to try to do? Control production so as to bring production and consumption down to somewhat of a level or just to keep on producing more that we could not sell at home or abroad?

Mr. BLAISDELL. It seems to me, of course, that, if you are going to deal with the price equation at all, you have to deal with it on your supply side as well as on your demand side.

Senator BARKLEY. Is that true any more of manufacturers and industry?

Mr. BLAISDELL. It seems to me not. If you are going to deal with those things, price fixing is not the way to get at it.

Senator BARKLEY. You say if we are going to deal with them. Do you believe we ought to deal with them?

Mr. BLAISDELL. There are certain of them that business men will deal with themselves, that, as far as the Government is concerned, it does not deal with them at all. There are certain others that there seems to be pretty universal agreement that they cannot be dealt with by individual business men alone, and the taking of chances in competitive business. Your own illustration, Senator, of agriculture

seems to be a case in point, that it was only by the intervention of the Government in a wide program that you could deal with that.

I suspect that if we are going to deal with them, that you have got to have the type of cooperation, some of it indeed purely voluntary on the part of business men and others, that you can hardly get to first base that way; that the immediate pressures of the particular industry make it almost impossible for them to deal with it alone. Decisions have to be made which will go against certain methods of the industry. It is not popular to deal with them that way. Only an impartial authority can do it. No one likes less than I the necessity of intervening in control, but when faced with the situations that only intervention can deal with, then I hope I can face that fact and try to deal with it intelligently.

Senator BARKLEY. We were faced with the situation.

Mr. BLAISDELL. Decidedly.

Senator BARKLEY. And still are.

Mr. BLAISDELL. Decidedly.

Senator BARKLEY. With reference to the construction industry which you mentioned a while ago, you are not to be understood as contending that the only thing the matter with it was the price fixing under the code—and what was the other? You mentioned two things: Price-fixing under the code and one other.

Mr. BLAISDELL. The mandatory cost formula.

Senator BARKLEY. And cost formula.

Mr. BLAISDELL. They are two related things.

Senator BARKLEY. Those are probably important matters in connection with the construction industry, but that is not all that is the matter with it.

Mr. BLAISDELL. Not by a long ways. I think in connection with the building industry that there seemed to be three factors of primary importance; one is the cost of capital, the next is the cost of materials, and the cost of labor. Of these three, probably the cost of labor is the least important; the cost of building materials second; and the capital cost the most important. I am inclined to think that that is almost universally accepted by men who have studied the construction industry. This is simply one of the factors that has a place in that industry very definitely.

Senator BARKLEY. I did not want your statement to be construed as including all of the troubles that the construction industry suffers from.

Mr. BLAISDELL. I did not wish to make that implication.

Senator BARKLEY. It has been hit probably as badly as any industry and is still probably near the bottom of the list in the matter of any improvement. We have for that reason adopted a housing act, and various other artificial devices for stimulating the building industry, construction and repair of houses, which are on the average about 5 years behind compared with normal times.

We overbuilt here for a while, and now we have increased in population until we have absorbed that surplus, and normally you would expect a rapid improvement in construction. It seems to me it is bound to come, regardless of labor costs and material costs.

But I am not on the witness stand; I am just asking you some questions.

Mr. BLAISDELL. Have I expanded sufficiently on the Senator's question to have answered the question adequately? Do you wish to push me any further on that?

Senator BARKLEY. No; I do not wish to push it any further.

Mr. BLAISDELL. I will submit also a statement regarding the lumber industry, which code is, I believe, now under reconstruction, and will let that one go without quoting from it.

I take it that our fundamental problem here is the same problem that we were facing at the time the National Industrial Recovery Act was passed, that we were endeavoring to bring about a recovery, and at the same time we were endeavoring to establish some kind of machinery which might be used as a basis for securing fair competitive practices in industry, and that is it was a two-sided program, and behind that has laid another problem which we have tried to deal with for a much longer period of time.

And it is these problems on which attention has been focused by the National Industrial Recovery Act. They are essentially the problems of fair competition and the problem of monopoly, and as to the problem of monopoly we have been working along for same 50 years, and we still have monopolies. At the same time we have been working along the line, endeavoring to establish fair competition through the Federal Trade Commission Acts for a shorter period of time, and we still have unfair competition.

The attempt of the National Industrial Recovery Act was apparently to deal with this by a new type of administrative machinery. That machinery has been functioning for less than 2 years. During that time I dare say that we have learned a great deal about what to do and what not to do. We probably have learned more about what not to do than we have learned about what to do, but certainly the persons who have had anything to do with N. R. A. know a great deal more about the problems than they did 18 months ago.

Senator COUZENS. Speaking of monopoly, have you come in contact with patent monopoly at all?

Mr. BLAISDELL. I am not well acquainted with the problem.

Senator COUZENS. Have you observed any of it?

Mr. BLAISDELL. I have observed some of it.

Senator COUZENS. It is not very extensive, is it?

Mr. BLAISDELL. I am inclined to think that it is fairly extensive although I have not gone into it in detail. I know that there has been some misuse of patents, and I cited at the last hearing certain specific cases that had come to our attention where patents had been misused. My offhand judgment is that probably it is one of the types of monopoly that sooner or later we will have to deal with in some different terms than we have dealt with it up to the present.

Senator COSTIGAN. Has information on that subject been compiled in any branch of the N. R. A.?

Mr. BLAISDELL. Not that I know of, Senator.

Senator COUZENS. I think you will find the greatest difficulty in patents is rather from suppression than from production and sale.

Mr. BLAISDELL. I am sorry, Senator, I did not catch your statement.

Senator COUZENS. I think you will find that the evils from the patent situation are more due to the suppression of patents rather

than from the manufacture and sale under them. You have not observed anything in that connection?

Mr. BLAISDELL. I have not had any personal contact with it, Senator.

I come back to the general outline that I suggested at the last hearing, that industry could be broken down into a number of different types. In connection with the first, that of competitive industry, where, probably very little regulation is necessary, and that limited largely to only minimum wages and maximum hours. That would still have in that field the problem of unfair competition and the danger there is the same danger that was present at the time the Federal Trade Commission Act was written, namely, the danger of large and powerful businesses taking advantage of smaller competitors. The same problems are still present. The Federal Trade Commission has dealt with them to a certain extent. Probably there is a field there where a procedure somewhat different from that of the Federal Trade Commission may lead us in the right direction, that is, if we can deal with these problems before they come to the point of requiring action under the Federal Trade Commission Act, or under the Sherman antitrust law or the Clayton Act, we will get further than simply by endeavoring to deal with them in criminal procedure.

After all, what we are dealing with here is economic problems, and criminal procedure has never been very satisfactory as a method of dealing with them. The number of prosecutions under the Sherman antitrust law that have resulted in imprisonment, I think, are relatively few, and yet our problem is still here. To simply endeavor to go back to the prohibitions of the antitrust laws and rely upon criminal procedure will probably solve the problem just about as effectively as it has in the past.

We have at least a machinery in N. R. A. which can keep in touch with that problem constantly. It can probably provide certain types of action, either on the codes or under agreements which will enable us to at least make the first steps in a new direction of dealing with the problem. It is primarily on that account that I believe that the act should be extended, and extended by taking into consideration the experience of the last 2 years.

Just about at the time when I was at the last hearing Senator Harrison introduced a new bill. During the week-end I have not had a chance to examine that as closely as I would like to. I would very much appreciate the privilege of making detailed suggestions on that in accordance with your original suggestions, Senator Harrison, before you had introduced the bill.

The CHAIRMAN. You may do that.

Mr. BLAISDELL. I have indicated then that the antitrust laws have not solved the problem——

Senator BARKLEY (interrupting). Let me ask you, in connection with your statement that you think the N. R. A. ought to be extended. Of course, the extent of the extension and the modifications are matters to be worked out still. What do you think would be the results of its total abandonment of June 16, to industry and labor and the country?

Mr. BLAISDELL. I think the immediate effect on labor would be very, very bad. We have succeeded in getting at least some floors there which are pretty low, but N. R. A. has prevented, I believe,

taking out of labor a lot of the competitive risks that should be borne by business and I just cannot vision going back to that situation. It seems to me it would be a very definite step in the wrong direction, and that the very minimum that we could do would be to hold those gains that we have already made.

Senator COUZENS. Do you believe that labor should be subjected to the law of supply and demand?

Mr. BLAISDELL. Senator, I think the answers I have given already on questions affecting labor indicate that I feel we should put definite limits to the extent to which we let human labor be simply a commodity to deal with in the markets. Congress has already declared itself fairly definitely many years ago, and I am inclined to agree with its judgment.

Senator COUZENS. You spoke of putting a bottom on labor, so far as the minimum is concerned. If we do not have collective bargaining, how are we going to arrange any other schedules?

Mr. BLAISDELL. Senator, we have had minimum wage laws in some States for a great many years, and it has not been difficult to establish those minima. Under N. R. A. we have been able to establish minima which it is fairly clear have not gone any too high.

Senator COUZENS. That is quite clear, yes.

Mr. BLAISDELL. That is a matter of flexible judgment in connection with particular industries, and I think it is a practical thing to do.

Senator COUZENS. You do not claim that the minimum wage in the States that have adopted it have been very effective with respect to minimum wages throughout the Nation?

Mr. BLAISDELL. It has only been applied to a relatively small part of the working population.

Senator COUZENS. And because of the competitive conditions, you never can establish it State by State.

Senator BARKLEY. It has only applied, chiefly, to public works in most of the States that deal with it at all.

Mr. BLAISDELL. I was speaking particularly of the minimum wages.

Senator BARKLEY. Of course there is an element of supply and demand that always enters into labor.

Mr. BLAISDELL. Of course.

Senator BARKLEY. By fixing maximum hours of labor so as to make it possible for as many human beings as possible to share in the work that is available for all of them, you may affect the demand for an individual's labor, although you do not have a very material effect upon the total volume of labor necessary to do the work that this country requires. Is that true?

Mr. BLAISDELL. If I interpret your statement correctly——

Senator BARKLEY (interrupting). For instance, if by lowering the hours of service in any industry, or in the country as a whole, you spread employment out among a larger number of people, you have not necessarily created any more volume of work, so that the volume of work is practically the same except insofar as giving more people work, we enable more of them to become consumers and purchasers of things that might indirectly bring about more employment somewhere else. You do not necessarily control the volume of work by regulating the hours of service.

Mr. BLAISDELL. I think there is a very important modification on that, Senator, which I went into in a little detail at the first hearing

at which I was present, and that has to do with the volume of production. There is a very considerable base of where you fix minimum wages and do establish maximum hours that not only do you spread work, but you increase the efficiency of production.

Senator BARKLEY. In other words, you fail to lower the efficiency of the working men by working them too long?

Mr. BLAISDELL. That is right. When you work people too long, tired people do not do as good work.

Senator BARKLEY. So that you not only get more people to work, but they do more work?

Mr. BLAISDELL. You get lower costs, which is the essence.

The CHAIRMAN. Does that apply to the action of this committee in the consideration of this N. R. A.? [Laughter.]

Mr. BLAISDELL. Furthermore, if you abandon any kind of regulation, you simply leave that situation, as far as monopoly is concerned, where it was, and I have already indicated that I do not believe we have dealt with it very satisfactorily.

Another point at which N. R. A. has made considerable progress is that probably we have more information today on these various problems than at any other single time, and the gentlemen who have been responsible in the N. R. A. for carrying out the various policies, I am convinced, are more aware of those problems and are in a better position to deal with them than probably any other group of men that there are who are in direct contact with these problems, and for that reason I should look with real apprehension on getting rid of that organization. I think that where you have built an organization with men of experience, that those are the people that ought to continue to go ahead with the job.

I am inclined to think that in connection with this particular act, that we might definitely place the requirement in the act that as far as the trade practices are concerned, only those practices should be approved which will tend to promote competitive price making rather than to hinder it, and that such trade practices as are approved should be those practices which tend to approximate competitive conditions. In these industries where we have a small number of units, where there is no open market, we have what one of our economists, whose material was recently printed as a Senate document, called "Administered Prices." Decisions are made as to what the price will be, and they try it out. It is not a competitive market in any sense. So in these industries, competition does not work. Trade practices may be set up in such a way that you may approximate more nearly competitive conditions. I think that type of requirement in the act might be very definitely a step in advance.

I would again emphasize a point that I made the last time, that probably a continuous fact-finding on these industries that are under the jurisdiction of N. R. A. with reports to Congress and the development of those industries under their codes would point the direction of N. R. A. and place Congress in position to act on the basis of factual data in such a way as simply committee hearings of this type previous to the writing of an act cannot do. We need a great deal more information than we now have.

Since you have given me your consent, Senator Harrison, to submit in writing at a later time my comments on the draft, I will not put in at this time some suggestions that I had.

The CHAIRMAN. That is what we need more than anything else.

Mr. BLAISDELL. I prefer to let those go over.

The CHAIRMAN. Does that finish your testimony, Doctor?

Mr. BLAISDELL. That finishes what I had in mind.

The CHAIRMAN. Thank you very much. You have been very kind and patient with us.

Mr. BLAISDELL. You have been very patient with me, Senator.

(The material submitted by Mr. Blaisdell in connection with his testimony is as follows:)

[Confidential: For use of Consumers' Advisory Board members only]

FEBRUARY 19, 1934.

Subject: Suggestions for code revision.

To: Gen. Hugh S. Johnson.

From: Consumers' Advisory Board.

During 6 months of endeavor to fulfill the responsibility assigned to it by you, "for watching every agreement and every hearing to see that nothing is done to impair the interests of those whose daily life may be affected by these agreements", the Consumers' Advisory Board has made certain observations on the working of approved codes which it feels should be embodied in a carefully considered report of the Board. The report is submitted in an effort to assist you in connection with the revision of codes at the meeting of code authorities, soon to be held.

EFFECT OF RECOVERY PROGRAM ON PURCHASING POWER.

The first of these observations is that the national recovery program, in addition to striking effectively against child labor and sweated labor, has succeeded thus far in its major objectives to increase consumers' purchasing power. Charts prepared by the staff of the Consumers' Advisory Board, copies of which are attached, indicate, however, that while there has been a net increase in consumers' purchasing power since the inauguration of the recovery program, rising prices at retail have largely offset the increased money income of wage workers and farmers. The charts are necessarily based on incomplete information, and do not attempt to isolate the various elements of the recovery program, such as the National Recovery Administration and the Agricultural Adjustment Administration, which have affected incomes and prices.

Other elements in the general price situation, not indicated by the charts, appear to the Board to present certain dangers. The first is the fact that retail prices have not yet fully reflected the price increases of the wholesale markets, so that a considerable number of new price increases may be expected in the spring. Retailers assure us that such will be the case, and no evidence has come to us to suggest the likelihood of counterbalancing decreases. The second is that unless the standards for wages and hours are decidedly changed the increase of wages and employment required by the codes lie mostly in the past; and that, since inventories have been fairly well built up, the growth of pay rolls is not likely to continue unless there is further growth of the final consuming market. A third element is that the average purchasing power per employed industrial and commercial worker has been decreased by rising prices, as indicated on chart II. This means expense of the previously employed, and emphasizes the necessity of following the injunction which you gave to the National Retail Dry Goods Association, in your New York address of January 18, to keep prices down.

In spite of this necessity, which you have continuously stressed, certain developments under the National Recovery Administration seem not to be working in this direction. Evidence gathered by the Consumers' Advisory Board, partly in connection with the recent hearings on price changes and partly through the examination of complaints received by it, indicate that arrangements to fix uniform prices have been made in the case of numerous products, sometimes locally, sometimes nationally, sometimes with code sanction and sometimes without. Cases in point, affecting cement, chemicals, electrical equipment and supplies, ice, lumber, and building materials, machinery and tools, office furniture and supplies, petroleum and supplies, rubber products, scientific apparatus, steel and fabricated metal products, and a variety of other items are shown in appendix A.

We have reason to believe that these products represent only a small part of those affected by uniform price fixing. We have received a number of letters,

such as the following, expressing the belief that uniform price fixing is part of the established order under the National Recovery Administration:

"A client of mine is a member of a group who has formulated a code but which has not as yet been filed.

"The code as constructed does not include a provision whereby a committee of the group can fix definite retail prices for certain products. My client has been called as a member of the cost committee and he has been advised by other members that it is legal to fix prices, not on a percentage basis, but on a fixed-price basis.

"My client is aware of the desire of the President not to increase sales prices unduly and as the program laid out to my client is a price set irrespective of how low the cost, the profits, in some cases, would be exceptionally high.

"Will you, therefore, kindly advise whether the fixing of prices in the manner described is contemplated under the recovery act or not?"

We also have evidence indicating that a number of industries have increased prices more than can be justified by increased wage payments under the National Recovery Act. In such cases the President's suggestion that price increases be deferred even at the expense of full initial profits has been overlooked in what appears to be an understandable eagerness to recoup heavy losses of recent years. Industries which our observations indicate may have retarded the recovery program by increasing prices more rapidly than they have increased wage payments include the lumber industry, where the price increases on sawmill products appear to have been about twice as large as would be justified by increased wage payments; the paper and pulp industry in which the price increases seem to have about two and a half times the increase justified by wage costs; and the petroleum industry (whose National Recovery Act code is now being administered by the Department of the Interior) in which consumers' annual bill has apparently been increased five or six times as much as the increase in the industry's annual wage bill. Such comparisons imply no criticism of the fairness of the prices in question, but are directed to the crucial question of increasing consumers' purchasing power in conformity with the design of the National Recovery Act. Studies not brought fully up to date indicate that, in widely varying degrees, the following industries may also have failed to increase mass-purchasing power: Furniture, cotton goods, rayon, brick and tile, paints and varnish, soap, bituminous coal mining, knit goods, men's shirts and collars, cement, and glass.

Our knowledge of this particular development, in the study of which we have been cooperating with the Division of Research and Planning, is relatively limited because of the small staff available to follow it, and there is no reason to believe that the industries mentioned include all of those which have failed to expand mass purchasing power.

This tendency in some industries to forget the recovery program in their own interests is, of course, strengthened by any arrangement which makes the determination of prices a matter of agreement among the members of the industry. The Board feels, therefore, that it is vital to the success of the program to reconsider with the greatest care arrangements authorized by codes which have this effect and to move quickly to appropriate revisions. In this matter it subscribed fully to the views expressed by Division Administrator A. D. Whiteside in his intermediate report of the price-change hearings.

Provisions which we think should be very critically reexamined include those relating to open-price systems, cost provisions, and cost-accounting systems, restriction of output by allocation or by limitation upon machine hours or plant operation, or upon the installation of new machinery, systems for artificially determining freight charges and market areas, arrangements to establish fixed-price differentials for different classifications of customers, resale price maintenance, and specific code authorization of price-fixing. Analysis with respect to such provisions has been made for the first 180 approved codes. Provisions for open-price systems are found in 81 approved codes. Of these 73 provide for a waiting period between reporting prices and making them effective, or for some means for competitors to meet the new prices on the effective date.

Provisions against selling below cost are found in 125 out of the 180 approved codes. Of these 125 codes, 3 define cost as an average for the industry, 3 define it as a combination of individual concern's and average cost, 8 define it as the cost of the lowest representative member of the industry or as "fair and reasonable" or "allowable" cost, 111 define it as the cost of the individual concern. Of the 111 codes which use individual cost, only 45 specifically permit members of the industry whose costs are high to sell below cost to meet competition.

Provisions for the limitation of machine hours appear in 24 approved codes, and for allocation of production in approved codes. Some form of provision for restriction of installation of new machinery or of other extension of industry capacity is contained in 28 codes. Basing points are established by 7 approved codes, zoning systems by 6 approved codes, and freight equalization and other systems of delivered prices by 33 approved codes. Fixed price differentials between different classes of customers are authorized by 38 approved codes. There is provision for resale price maintenance in 23 approved codes. Nineteen of these specifically provide either that distributors must adopt the prices of the producers from which they purchase, or that producers are prohibited from selling to distributors who do not comply with the selling schedules of their suppliers. Two codes provide that producers may enter into agreements with their distributors on resale policies. Two other codes contain provisions for fair trade practices which permit control by the producers over the resale prices of the distributors. Finally 17 approved codes provide for some degree of price determination by the President, code authority, or other agency. Six codes allow the code authority to establish price differentials. Appendix B gives the names of the codes in question. The work of analyzing approved codes, being carried on by the post code analysis section of the Division of Research and Planning, is not yet complete, and the lists submitted may therefore require some modifications.

OPEN-PRICE SYSTEM

The recent hearing on price changes produced a considerable volume of evidence that open price systems are facilitating uniform price fixing. Recognition of the facts disclosed at the hearing has been made by an order which provides that any arrangement for a waiting period in codes not yet approved will be stayed in the Executive or Administrator's order of approval, for 60 days or pending completion of a study of the operation of open price systems, and in Divisional Administrator Whiteside's report in which he emphasizes the dangers of such waiting periods. Detailed determination of what should be done with regard to open price systems must await the completion of studies now being made, but the information at hand indicates that the difficulty cannot be dealt with merely by elimination of the waiting period. The basic difficulty as we see it is that open price systems, with or without waiting periods, identify the person or firm quoting the low price and thus facilitate the use of pressure to force his price up to the level generally desired in the industry. Evidence in our files indicates that such pressure is being applied not only where open price arrangements have definitely received code sanction, but in instances where there have been efforts to establish uniform prices without code sanction. Quotations in point are presented in appendix C.

A remedy is to eliminate such pressure. We believe one way to do it is to point out frequently and forcefully that uniform price-fixing is not a part of the N. R. A. program and, as you have stated, unless sanctioned by a specific provision of an approved code, is contrary to law. While we do not believe it desirable to eliminate the reporting of prices and price transactions completely, we feel that it would be possible to throw safeguards around the reporting in such a manner as to make more difficult the harassing of those who would keep prices down. To this end we suggest as worthy of your consideration, that actual prices charged in sales already made, be reported to an N. R. A. agency pledged to keep the detailed reports confidential and to supply to members of the industry only statements of the range of prices at a given date. If the reported prices indicate the existence of questionable conditions we believe that remedies can best be applied by such an agency rather than by those who have private interests at stake.

PROVISIONS AGAINST SELLING BELOW COST

Provisions against selling below cost, as we understand it, were inserted in the codes in an effort to check predatory price cutting. We assume that such provisions were not intended to serve as a means of fixing uniform prices for industry, with such prices so fixed that efficient concerns suffer a restriction of output for the benefit of less efficient concerns. Nor do we think it was intended to have such clauses used to maintain the inflated capital structures of 1929. As these provisions have been written in certain instances, however, they provide, in effect, for relatively high and uniform prices for industries as a whole. This is done by basing prices upon average costs which are necessarily higher than the costs of the more efficient producers.

Codes whose cost provisions are of this character, together with the nature of the standard cost specified, include the following:

Average costs: Lumber and timber products, lime, cigar container.

Average overhead: Builders' supplies, retail lumber, structural clay.

Fair and reasonable or allowable costs: Rolling steel door, limestone, malleable iron.

Lowest representative or lowest reasonable cost: Millinery and dress trimming, excelsior and excelsior products, fire extinguishing appliances, motor vehicle storage and parking, refractories.

In addition, it has recently been made a general N. R. A. policy to permit the code authority, when it finds its industry is confronted by an emergency, to determine "the lowest reasonable cost for the products of this industry." It is provided further that such a determination may serve as a basis for minimum prices, sales below which constitute an offense against the code. This policy, in addition to making emergencies attractive to industry, has the effect of permitting the establishment of uniform minimum prices in all cases where it is adopted by industry.

With representatives of the industry furnishing the cost information we have reason to believe they are not niggardly in their estimates When such is the case they seek from the consuming public through uniform prices based upon a high average of costs more than is paid out to increase purchasing power through higher wages. Such arrangements also have the effect, as previously indicated, of shifting production from the efficient firms which could, if permitted, make money by selling at much less than the average cost, and transferring it to high-cost establishments. As a result, in applying provisions against selling below what amounts to an average cost for an industry, some large price increases have been obtained. Though we have been unable to secure accurate information indicating the extent to which these price increases have been occasioned by increased wage payments, it seems extremely likely that the balance has been tipped very heavily against a net increase in real purchasing power. An outstanding example of this is the lumber industry.

Many of the provisions include such elements of cost as charges for excessive and obsolete equipment, selling expenses, and even returns on investment. Such provisions raise the question of whether or not recovery can be secured while basing minimum prices upon charges for the use of plant and equipment, etc., which would only be appropriate to a far larger volume of sales and a far larger volume of consumers' purchasing power than now exists, and in some cases than ever has existed.

If the cost provisions of the codes are to promote rather than retard the recovery effort, we think that the following general propositions should govern them:

1. Individual cost rather than average cost for an industry should be used; and the provision that there may be sales below individual cost to meet competition should be applicable in all cases.

2. The formula for determining cost by each individual concern should be carefully defined and approved by an agency of the N. R. A., specially equipped to deal with such problems, and to supervise continuously the working of cost formulas and cost-accounting systems.

3. Such a formula should include actual outlays for labor and materials, both direct and indirect. It should not include selling expenses or financial costs, or a larger proportion of the total overhead than the ratio of the present output to the normal output of the enterprise; normal to be taken as the average output for a period of years.

Such limits are based upon the assumption that the cost provisions are intended to set the lowest permissible limit to price cutting rather than to forbid anyone to operate without a profit and that they therefore apply only in periods when distress has limited the consumers' buying power and has imposed upon industry a peculiarly difficult problem in disposing of its products.

In view of the great technical difficulties of handling cost formulas on any terms, and in view of the clearly established danger that they will be used to facilitate plans for uniform price fixing, we feel that a more effective way of stopping predatory price cutting would be to outlaw it in general terms and have an agency set up in the N. R. A. to deal with specific cases promptly, thus gradually building up certain general rules which might be safely applied. In view, however, of the fact that it has been a fixed policy of the N. R. A. to encourage provisions against selling below cost, we submit the propositions outlined above, as minimum standards to govern the application of such provisions.

OUTPUT LIMITATIONS

While we recognize that limits upon output and systems of dividing output among producers in the field may be desirable in a few industries which are in a state of virtually complete collapse, we feel that the application of such limitations is dangerous unless carefull supervised. General restrictions upon machine hours inevitably have the effect of forcing efficient producers to follow the pace of the less efficient and thereby increase the consumers' bill disproportionately to the increase of purchasing power through expanded wage payments. Provisions giving the code authority power to adjust output periodically and establish quotas for members of an industry involve the recognition that private business cannot operate in the industry without the formal restriction of output which is characteristic of monopoly. Such provisions even if legal nder the N. R. A. seem to us contrary to the spirit of that section of the act creating it which forbids monopolies. Where such remedies are needed we think that they should be applied directly by the Administrator. Of three codes making provision for periodic determination of output and the fixation of individual quotas two leave it to the code authority.

The effect of leaving decisions of this sort to private interests or of limiting public action to consideration of plans submitted by them has been as we see it to encourage unwise restrictions of output and to allocate that output among producers upon unwise principles. Quotas assigned to the industry by the code authorities have been set low at the expense of employment when it appears that a healthier alternative would have been to seek larger sales and increased employment through low prices.

The principle generally followed, in dividing the limited output among the available producers, gives each producer a proportion of the market equal to his relative producing capacity. The effect of such procedure is to limit the production of those efficient concerns whose ability to supply products of good quality at low prices has given them operation relatively near their capacity, and to encourage, at their expense, the continued existence of concerns which could not otherwise survive. In lumber this practice went so far that even though total production and sales were declining, establishments were revived which had been shut down for 2 or 3 years. Such a division of the output of industry keeps production costs high and creates a situation in which members of the industry need to overcharge the consumer in order to survive. Because of the impossibility of foreseeing all of the abuses to which it is subject, we think that allocation or restriction of output should be surrounded by the following general safeguards:

1. Restriction and allocation should be directly determined and supervised by the administrator.
2. Insofar as measures of efficiency can be found, systems of allocation should give preference to the more efficient producers.

Much the same considerations apply to numerous provisions in codes placing limitation upon the installation of new capacity. In the light of the great desirability of expanded activity in the capital goods industries, and in the light of the patent indisposition of members of an industry to welcome new competitors, we feel that, although unwise expansion of capital equipments should be discouraged, provisions controlling such expansion should be administered by a public agency. To give the code authority a large measure of control in deciding whether the installation of new capacity is to be permitted, as is the rule in the administration of provisions of this type, is to place an unreasonable temptation before the business interests involved.

Basing points, zone-freight systems, and other systems of dividing the market

A number of the approved codes provide for basing-point systems, zone-freight systems, and similar arrangements. While we are not prepared to deny that such devices may be needed and used fairly in some industrial situations, their history is one of grave abuse. There is abundant evidence to show that in the past such systems have been used to load upon the consumer charges for imaginary freight, and to confront him with an essentially monopolistic system of uniform delivered prices. They have fostered discrimination between one buyer and another and uneconomic cross hauling of goods as well as production at uneconomic points. Since there is such a strong case against them, we believe that devices of this type should be permitted only under peculiarly close scrutiny by the Administrator to guard against potential abuses.

In trying to discover whether existing basing-point systems avoid such abuses, we have asked for information about the amounts of product made by each

producing center and the points to which this production is distributed. Specifically we have sought this information about the steel and lumber industries. Thus far we have been able to obtain no information sufficiently detailed to determine to what degree the basing points established permit the abuses mentioned. Evidently the code authorities themselves do not have this information. Therefore, we urge that in all cases there, there are basing point systems, zone-freight systems and other systems of dividing the market, each code authority be instructed to compile immediately the information which the Division of Research and Planning may think necessary to an appraisal of the economic significance of the particular system of dividing the market used in the code.

We recommend that, as soon as this information is available, all basing-point systems, zone-freight systems, and other systems of dividing the market be reconsidered in the light of the facts and that any changes be made which may then seem desirable.

We suggest that the principle underlying such changes should be to establish as nearly as may be practicable in each case a system in which each market is served by its nearest sources of supply and in which the freight charged corresponds to the freight actually paid.

Though, of course, willing to be guided by the facts when they become available, we feel that the present danger of having prices outstrip increased wage payments makes it peculiarly undesirable to experiment further with price systems of this general type. The history of such systems, as provided in studies of steel and cement, supports suggestion made above which is especially urged in cases where no such system has in fact existed before the introduction of a code.

FIXED PRICE DIFFERENTIALS BETWEEN DIFFERENT CLASSES OF CUSTOMERS

The formidable drive to embody in N. R. A. codes fixed price differentials between different classes of customers has been motivated by two major and somewhat conflicting desires. One is the desire of intermediate distributors such as jobbers and wholesalers, to operate upon a margin protected by law from the competition of more direct methods of distribution. The other is the desire to avoid having their prices driven down by the bargaining strength of large buyers who demand discounts greater than can be justified by any lowering of costs attendant upon filling their large orders.

It seems desirable to prevent very large distributors from clubbing unreasonable discounts out of manufacturers, but it is very undesirable to freeze the present system of distribution by setting up arbitrary price differentials to apply to different stages of distribution. It seems to us that the dangers of artificially bolstering our system of distribution through a scheme of fixed differentials outweigh any advantages this device may afford in protecting sellers. Buying abuses we feel can best be handled by an administrative agency prepared to deal promptly and decisively with complaints of price chiseling by very large buyers rather than by a general system of price differentials. Our experience with complaints indicates that the producer is much more likely to have facilities for registering an effective complaint against a buying monopoly than the ultimate consumer is to have the necessary information and facilities for complaining effectively against an excessive distributing charge.

RESALE PRICE MAINTENANCE

The present policy of refusing to include provisions for resale price maintenance in N. R. A. codes was adopted after such provisions had been included in eight codes. Since the adoption of this policy 15 codes have been approved which either directly or indirectly make possible group action for resale price maintenance. Such arrangements go far beyond the reinforcement of the well established right of the individual seller in private enterprise to choose his own customers and sell to them on such terms as he sees fit, and tend to deny to the consumer the advantages which should accrue to him, as a result of the efficiency of some distributors. We feel that these considerations which were recognized in the establishment of the present N. R. A. policy with reference to resale price maintenance, are applicable to the codes generally and that code revision should include elimination of provisions permitting this practice.

PRICE-FIXING IN CODES

A limited number of codes in which it has been provided that minimum prices are to be fixed by authority of the code do not differ essentially from some of the codes where there is no mention of such an arrangement. By using an average

cost as the basis of the minimum price to be charged by the industry and coupling with this some standard form of freight charges, much the same result is obtained as though uniform prices were authorized in the first instance. Consequently, the observations previously made in discussing cost provisions apply to the codes where uniform price-fixing is explicitly authorized. An additional objection to price-fixing in accordance with explicit code provisions is that the prices set tend to be more rigid than those attached to some cost basis, and also tend to be set without any explicit accounting of the cost elements involved. This was notably true of the code for the cleaning and dyeing industry where, given an authorization to fix minimum prices, representatives of the industry proceeded post haste to set a schedule of such prices without making even a plausible pretense that they had analyzed the costs in the industry.

We recognize that where an administration is confronted with a market crumbling speedily under demoralized conditions there is something to be said for a minimum price fixing as an emergency measure under strict public control and under strict time limits. However, such a device, like a protective tariff is very difficult to abandon when once embarked upon. Furthermore, when minimum price-fixing, is authorized for one industry, perhaps for good reasons, there is inevitably set up the basis for an enormous clamor for it by industries in which an emergency has come to seem attractive. Therefore, we feel that such minimum price-fixing should be eliminated from all codes, there being no emergencies at this time which would justify it in the industries where it has been granted.

In this connection, this Board proceeded initially on the assumption that price-fixing might well be explicitly authorized in the cast of wasting natural-resource industries. Our experience, however, has led us to believe that price fixing is at best an extremely dubious remedy for the admitted ills of a number of these industries and that if a decisive change in the conditions prevailing in the markets is required, a far more desirable method of procedure is to be provided for allocation of production at the source, with safeguards such as those indicated previously, and to avoid the fixing of prices in the distributive process.

QUALITY STANDARDS AND INFORMATIVE LABELING

As you have stated, the reasonableness of the prices of products depends not merely upon the dollars and cents involved, but upon the character and quality. On that account this Board has consistently endeavored to utilize the codes to secure improved quality standards and informative labeling. It has felt that a "code of fair competition", to be fair to consumers and producers alike, must have standards by which to measure quality as well as to measure price.

In these efforts, representatives of the Board have met with relatively little success. Of 237 approved codes only 73 make any provision for quality standards and in some instances such as the case of the code for the gas appliance industry, there has been a failure to embody in codes standards previously developed by the trade groups presenting the codes. Also some codes have embodied standards clauses whose effect it is to facilitate arbitrary price fixing and to aid one class of producers to gain advantage over its rivals. This is true, for example, of the codes for the asbestos, excelsior and excelsior products, metal tank, slate fertilizer, envelop, and rubber manufacturing industries.

The failure in the field of standards, as we see it, has been due in part to the unwillingness on the part of certain trade groups and industrial groups to attempt the establishment of quality identifying labels; in part to the absence of well worked out quality standards which could be safely embodied in codes being produced at a very rapid rate; in part to inability on the part of our representatives to present the case for standards effectively; and in part to a failure on the part of your deputies to accord to the question of quality standards the importance to which it is entitled in the N. R. A. undertaking.

If, however, the N. R. A. is to fulfill the measure of usefulness in promoting fair competition of which it is capable, we feel that there must be far greater emphasis on code provisions calling for informative labeling. In addition we feel that there should be an attempt on the part of the administration to promote the development of quality standards for inclusion in codes. The Board has accepted a report from its subcommittee on standards for which it requests your most careful consideration.

CODE ADMINISTRATION

You have indicated on several occasions that you feel that the usefulness of the Consumers' Advisory Board lies primarily in watching the operation of codes with a view to seeing that these experimental agreements do not injure the consuming public. As the N. R. A. moves from the phase of code writing to the phase of code administration, the question of securing adequate protection for the consuming public becomes crucial.

To assure a good chance that there will be such protection of the consumers' interests, we feel that there are certain very definite requirements in the administrative set-up which have not yet been met. One is the provision of adequate financial resources for the consumers' advisers to the administrative members of code authorities. Such advisers, whose appointment is suggested in the Information for Code Authorities, prepared by the N. R. A. Code Authority Organization Committee, are apparently to be given no positive power. The disadvantages of such an arrangement, however, seem to us of far less importance than that no provision has been made to see that they are well enough paid to secure the most competent service possible.

Though their duties are to be purely advisory under the present plan, and although their access to information bearing upon the operations of the code authorities is to be limited, we feel that if adequate funds are provided to secure capable and fortright people for these positions they will serve in a very important degree to safeguard and promote the consumers' interest. These advisers, if they do their job well, must be equipped to work continuously in studying the industries to which they are assigned and should have full access to the operations of the code authorities. In the case of the more important codes they should have the services of assistants. The provisions of funds for these consumers' advisers is vital to the attainment of a balanced administration of the National Industrial Recovery Act in the public interest.

It seems desirable in the interests of a well balanced administration to provide for a large degree of detachment from business interests in the personnel of administration representatives on code authorities. If, as is at present provided, at least one administrative representative is "to have a background of experience in the industry or in an allied industry, but without present interest herein or embarrassing connection therewith", and if on most code authorities there is to be only one administration representative, this representative, however carefully chosen, must, in the nature of the case, be one whose experience is like that of the business members of the code authority. In accordance with the provision for short term appointments not exceeding 1 year, there is a likelihood that he will have difficulty in taking full account of all of the interests involved in the N. R. A. Moreover, if any continuous application of administrative policy is to be developed toward a given industry it will be handicapped by the rapid turn-over in the administration representatives on code authorities. Such an administrative set-up has obvious advantages in providing technical business competence, but it emphasizes the need of well financed consumer advisory service to the administration representatives on the code authorities.

SIGNIFICANCE OF CODE REVISION

Under your leadership the N. R. A. has already rendered enormous public service. However, there are some risks of a more general character than those previously discussed. It has served and is necessarily serving to promote further organization of business, industry by industry. It has given and is giving much impetus to the organization of labor. Inherent in this development is the chance that as each separately organized industry seeks to promote its own interests, the broad interest of the community of business men and workers in a proper balance among industries will be obscured; and the further chance that the interests of consumers who are not eligible to enter a trade association or labor group will be sacrificed for lack of organized defense. In this connection we are necessarily mindful of such facts as those disclosed by the development of cartels in Germany where, notably in the case of the coal cartel, employers united in a monopoly with their workers to exploit the consuming public, which necessarily embraced a vast preponderance of people who could secure no gains from the success of the workers and employers in this industry.

The suggestions which we have embodied in this report, though often expressed in technical rather than broad social terms, are designed to aid the Administration in avoiding developments such as these. The acceptance of a particular cost formula, though seemingly a matter of concern primarily for accountants

may, as you know, change the entire structure of an industry, applying both to codes still in process of drafting and to the revision of codes previously approved, have been written with these larger social and economic implications in mind.

Cases of Pressure to Fix Prices

(In 21 codes)

I. The correspondent was urged to copy the prices established and published by others, although it was known that agreement was illegal. (The code provides for open prices with a waiting period and for no sales below individual cost except to meet competition, and power of the code authority to require withdrawal of "unfair" prices after investigation.)

Letter of March 2, ——— manufacturer:

"The form of the ——— code itself operates to exert pressure to raise prices. The ——— manufacturers have been informed that it is desirable to get their prices in line by copying each other's prices, although admonished that it would be illegal to agree to do so.

"That the code may be properly administered, it provides for a code authority composed of five members—only one member being elected by majority vote of the industry, and four being elected by a weighted vote, one vote for each $50,000 annual sales. Thus the four nominees of the four largest manufacturers are automatically elected, resulting in government of the industry, of, by and for "big business."

"We recommend a revision of the ——— code:

"Abolition of weighted voting. Setting up of a code authority outside the industry. Requiring the filing of minimum prices only. Abandonment of "time limit" so that prices will be effective on filing."

II. Under pressure a small manufacturer unwillingly raised his prices. (The code provides for an open system with a waiting period and for no sales below individual cost except to meet competition.)

Letter of April 3, ——— small manufacturer:

"A meeting was held in ——— which I did not attend. The night the meeting was held one of the men who had been in attendance at the meeting called me on the telephone and asked me to meet him for a little talk. I told him that I would be busy until late in the evening. He said that did not make any difference to him—that he would meet me at any time so I met with him. He talked about general things and eventually got around to talking about prices. We talked about an hour and I would not commit myself as to my intentions regarding filing prices. There was considerable pressure put on me then. I was then urged to meet with some other men in ——— the next day and I did so only because pressure enough was put on that I did not want them to think that I was not willing to meet with them and be a good sport.

"We met the following morning and for several hours these men talked with me explaining how a small manufacturer in the steel business was taken to Washington and his prices forced into a line with others etc. and how this and that concern had failed only because they did not get high prices for the goods sold. When we parted that day I had not committed myself to file prices as they intended to do nor did I on the day the prices were filed. [Date.]

"My first filed list apparently was the only one different from the others. As soon as the prices were available to one another, I received telephone calls from some of the manufacturers, and they were very much disappointed because my prices were not the same as theirs.

"I based my original price list on one which was used in 1926, and to my mind it was in line with the line of things as they are today."

III. The code authority requested members not to cut prices. (The code provides for an open-price system with a waiting period and no sales at or below cost.)

Letter of February 27 ——— manufacturer.

"No one asked us to raise prices; however, the code authority of the ——— industry has asked us to refrain from filing lower prices. As this is the only way in which we can secure business and keep our men employed, we intend to file lower prices very shortly."

IV. A meeting of the industry fixed the prices higher than the complainant desired. (The code provides for open prices with a waiting period but has no cost provision.)

Letter of March 9 ——— manufacturer.

"I would suggest, however, that this provision in the open-price system which calls for a certain number of days elapsing before a change becomes effective, file becomes eliminated * * * there was upon price schedules by members of the industry a majority quoting the same price. There were three or four manufacturers who had a differential of between 1 cent and ½ cent less than that of the majority.

"A meeting of all the manufacturers was held in December 1933. I personally attended this meeting, representing ——— Co., and at the meeting various phases of the code were gone into and discussed by the members arose the question as to what the manufacturers were going to do about new prices. It was first decided that all members should file their new prices to become effective January 2, 1934.

"I might mention at this juncture that there is in our industry what is known as the "——— Manufacturers Association". They have been appointed to manage this industry under this code, but we have not for many years been members of this group.

"The conversation in this connection started by the chairman of the code authority asking the largest producing member of the industry to give to the rest of us what he considered would be the increased prime cost in the manufacture of ——— ——— ———.

"This information was given to us by ——— ———, president of the ——— ——— Co., states that their records showed that at that time the increase would run to 0.014 per ———.

"The same question was then put to all members in turn, and to the best of my knowledge ranged from this point to a high of almost 0.02 per ———. I gave our figure of 0.015 per ———.

"The next order of business was what shall the prices be for a carload of ——— ——— ——— ———. The writer, asked for his opinion, said he favored a price of 15½ cents per ———. All other manufacturers present, with the exception of the ——— ——— of ———, and ourselves, were in accordance with a price of 16½ cents per ———. I stated that I was not in favor of this increase as I felt it to be in excess of the actual cost of the industry under the National Recovery Act.

"Part of the argument placed before me was the fact that the consumers were expecting an increased price and they might as well get it at once rather than try and build it up over a period of time."

V. The trade association threatened "immediate action" against a price cutter. (The code provides for an open-price system with a waiting period and for no sales below individual cost.)

The following is from a photostatic copy of a letter:

"We have received several complaints regarding the prices you are quoting for ——— ———.

"We wish to inform you that a minimum price has been set by this club of 30 cents for ——— ——— ——— and 10 cents for each additional ———.

"We understand that you are sending out cards quoting 30 cents for ——— ——— ———. This does not meet with the prices agreed upon by the manufacturers in accordance with the ——— ——— ——— Association and our adopted code. In view of the above we expect a reply from you by return mail as to what action you will take in the matter. If we do not hear from you it will be necessary for the writer to hand this matter over to the executive committee for immediate action."

Letter of March 5, ——— manufacturer.

"Our code was signed as stated above, but as yet the ——— ——— ——— Association has not agreed on a price list and it seems that we are all working under any price list we may see fit, which is indeed a very unfavorable condition.

"This firm has operated in the red for the past 5 years and if there could be a legitimate price list established and put into operation, no doubt we could come out from under and take a place with other industries who are working under the same system. We are informed by the ——— Association that a schedule of prices will soon be ready to be put into operation, and just as soon as this is handed to us, we will endeavor to carry it out to the letter and will expect everyone else to do the same."

VI. Code authority uses various forms of pressure against low priced firms. (The code provides for an open-price system with a waiting period and for no sales below reasonable cost.)

Letter of March 15, ——— manufacturer.

"A few weeks ago the writer called on one of his customers and the customer during the course of the conversation told me the monthly production of several manufacturers and explained that he knew our production, sales, and so forth. This information is given confidentially to the ——— ——— Association, and according to the code is kept in confidence. We are considering refusing to make additional monthly reports, because of this very incident. Our customers and competitors have no right to know exactly what progress we are making. The information which our code requires is very unfair in our estimation."

Letter of March 30, 1934, ——— manufacturer.

"Mr. ———, a member of the code authority told me at the meeting held in ——— sometime ago that he was not threatening us, but if we did not straighten out our price situation in ——— it was quite possible that he would open a ——— factory in this district.

"Mr. ——— asked us in Washington to bring our price up to his level as he thought we would still get a substantial amount of the local business in this district. One of our friendly competitors informs us that at a recent meeting held in ——— it was general conversation that our company and ——— company had sold 15 percent of the ——— sold in the United States during the past 60 days ending (date), and that if we continued this operation the general price would be lowered.

"You understand that we are located in ———, ——— ———, —— miles from our nearest competitor, and we are producing our ——— miles from high quality ——— ——— which we are able to obtain at a more cheap figure from local dealers. We are paying 20 percent more for both skilled and unskilled labor than is being paid in the South. With our low material cost and proximity to market we think we should sell our merchandise at a price yielding a reasonable profit and based on our own cost and that is the policy we are pursuing."

Letter of April 3 ——— manufacturer.

"We are enclosing photostatic copies of two letters written by ———, a member of the code authority for the ——— ——— industry and general manager of the ——— ——— Company.

"These letters express the attitude of the members of the ——— ——— Association toward us and show to what ends they will go in trying to harm us.

"We are only trying to supply our own territory with its requirements. We are complying with the code in every respect. Our code requires that prices be published and because we published a price of $5 per ——— under the majority of the manufacturers, they call us price cutters, say we have second-quality material, say we are not complying with the code, and many other things.

"We really gave Mr ——— credit for being too smart a man to write such a letter.

"The southern members of the ——— ——— Association are endeavoring to get manufacturers in other districts to agree to allocation, but they have been turned down. Allocation would mean an immediate advance in price and the price is already plenty high, if not too high.

"The ——— ——— Manufacturing Co. were trying to buy ——— to be able to get in on the local ——— job, which we understand is being financed by the Government.

"We had covered one jobber for this job who we understand has the contract."

The following are from photostatic copies of letters enclosed in the above letter (letters are addressed to above manufacturer):

"FEBRUARY —, 1934.

"We beg to acknowledge receipt of your letter of the 5th instant. We have just been in communication with the secretary of the ——— Association and he informs us that, under the code, we are not permitted to extend our price to you. On all quotations on specific jobs the limit of time was ——— ——— and unless specifications were in on that date the quotation expired.

"There are only two concerns in the country that are fighting the ——— ——— Association and who do not belong to it. These are ——— ——— of your city and ——— ——— of this city. Both of these concerns are cut-rate outfits and have never sold their products on an equal basis with the other manufacturers. They have been quoting ——— base for months while all the rest of us have been on ——— base. We are trying to get relief from Washington but thus far we have not been able to accomplish anything.

"You say that the ——— ——— Co. have got protection from two concerns and we believe that they must be the two above mentioned. All of the other manufacturers in the country are trying to cooperate their business under the terms and provisions of the code. ——— ——— appeared in Washington with

their attorneys week before last and fought the ——— ——— Association in every way they knew how. They made fools of themselves but their tactics have not been curbed as yet.

"Under the circumstances, there is nothing that we can do. We really would like to assist you and at least put you in a position to compete. We would do this if it were possible for us to do so. We feel quite certain that any protection given must be from either ——— ——— or ——— ———."

"FEBRUARY —, 1934.

"You ask us about the procedure on future quotations where the contract will not be let for a period up to 90 days. We beg to advise that we are permitted to cover you until the time that the material is actually shipped. However, this applies only to specific jobs and the order must be placed with the manufacturer within 60 days after quotation is made.

"In other words ——— the jobber must place the bona fide order with the ——— together with specifications within 60 days after quotation is made. Then this order is good at the price quoted until the material is shipped to the job. The reason for this is because the jobbers may be quoting on a job ——— if the price advances every one of them will order out the material for the job although only one has been successful in getting the actual order.

"You mention the fact that the material of ——— ——— is brittle. It could not help but be ——— ——— ——— tells the writer that he uses over 75 percent scrap in his mixture. With a situation like this his ——— ——— is bound to be brittle and second grade in every respect. We do not use a pound of scrap, and all of our material is made with ——— ———. The ——— ——— situation is causing more trouble than anything that we have to contend with and of course since they have established a reputation of price cutting they have to live up to it. Therefore, they can never expect to do any business unless they have something special to offer. The only thing special that they have is second quality ——— ——— and if the jobber considers this to be sufficient compensation then there is nothing further that we can say."

Letter to manufacturer from secretary of the code authority, November 21, 1933.

"Acknowledging your letter of November — proposing an amendment to the Code of Fair Competition for the ——— ——— Industry permitting five 8-hour days per week for common labor, or establishing a $15 minimum weekly wage.

"In the original application, a maximum of 30 working hours per week was requested, but as consumption of ——— ——— did not at that time, and does not now require even 2 days per week to meet the demand—we are allowed 27 hours as provided in the code. Under these circumstances it would not be consistent to request additional time for the benefit of a few who wish an unfair advantage in operating activities in order that they may continue to cut prices.

"The code does not prohibit any manufacturer from paying more than the minimum wages prescribed therein. Any employer of labor is permitted to pay as much as he chooses. The code restricts employers to minimum wages only. In view of the statement made to the Administrator in your letter dated ———, that costs do not warrant advance in your prices to the level of other manufacturers, I am sure that it will not be any hardship upon your company to advance your common labor to $15 per week if you so desire. Profits of the other manufacturers will not permit this.

"In view of the purpose for which the Recovery Act was intended, we are sure that the administration would not look with favor upon any movement that is designed to defeat its purposes, and the members of this association respectfully decline to apply for the change in maximum working time requested by you."

VII. The code authority fixed prices and told members that they would be violating the code by selling lower. (This code provides for an open price system with a waiting period and for no sales of base products below individual costs. The code authority may state for variation from base products the minimum additional to and maximum deduction from the price of the base product. All such additions and deductions must be based upon direct cost.)

Letter of February 28, ——— manufacturer.

"In the matter of the ——— ——— Code, the price of $24.25 was fixed by a price committee. We had no part in the formulation of this price.

"Thereafter, we were approached by several of the code committee, and other members of the industry, with the argument that unless we published prices in

line with the $24.25 price which they had fixed, they would meet whatever price we fixed.

"We attended exactly four meetings in which the matter of prices was discussed and in which we were told that we should meet the $24.25 price. We were also told that it was the code authority's ruling that in connection with prices we would have to publish an increased price for zone 2 of 10 percent, and a further increased price for zone 3 of 20 percent.

"We advised the meeting that we considered the fixing of the price of $24.25 too steep an advance over our then existing price of $10, in that it would increase the wholesale price to $15.62. We suggested that the proper advance would be to approximately $12.80, but that in view of their arguments we hope to lose our competitive advantage by fixing any such price as they had in mind.

"We thereupon fixed a list price of $23 which brought our article down to $14.52 or $1 less than that which the other manufacturers had fixed. We were definitely advised that all members of the industry had agreed on the price of $24.25.

"In fixing our price at $14.52, we struck an average to cover the entire country, without regard to zoning (which we felt was a fair price, since freight was included) as we felt and still feel that the inclusion of the zoning provision under any enactment of the code authority is completely illegal as discriminatory.

"We state it as our opinion that there was pressure brought upon us to bring our prices up to that fixed by the other members of the industry.

"As a matter of fact, in ———, a member of the code committee and a competitor, very generously told us that we were going to 'Atlanta' because we were violating the code in the matter of prices, etc."

VIII. A group of local manufacturers decided that everyone must quote the same price because of the code. (The code provides for an open price system with a waiting period and for no sales below individual cost except to meet competition. When the code authority has determined that an emergency exists, no sales may be made below reasonable cost subject to the Administrator's review.)

Affidavit enclosed in letter of April 7, ——— manufacturer:

"STATE OF ———,

"*County of* ———.

"Personally appeared before me, ——— ———, notary public in and for above-named State and county, duly commissioned and qualified, ——— ———, who, being duly sworn on oath, states: That ——— manufacturers of this city, and at that meeting it was announced that due to code of fair competition for the ——— ——— industry, a secretary had been employed, and in the future anyone estimating a job, must first call this secretary to see if a price had previously been made by anyone connected with association; if not, then the first price made would be the established price, and the same price be given to all.

"It was also suggested that the same cost be filed by all the manufacturers connected with this association, and this cost price be arrived at by using the list price of the ——— ——— Association by grouping the different sizes of ——— then discounting the list.

"Further, deponent saith not.

(Signed) ——— ———.

"Sworn to and subscribed before me this — day of ——— 1934.

(Signed) ——— ———, *Notary Public.*

IX. Filed prices were withdrawn by a member of the industry who "could see that it wouldn't help us any." (The code provides for an open-price system with a waiting period and for no sales below lowest cost of a representative member of the industry.)

Letter of March 9, ——— manufacturer, who is a member of the code authority:

"The present prices prevailing in the industry while not identical, might be said to be "substantially identical."

"It is only fair to state that the writer is a member of the code authority of our industry, consequently where there has been pressure or persuasion on the part of the code authority he has been a party to it. No pressure has been used other than that code authority did direct the attention as of the members of the industry to the provisions of the code, and to the fact that the code authority under the provision of the code, and to the fact that the publication of prices below the 'representative cost' established by the code authority under the provision of the code, would constitute a violation of the code. Persuasion was, of course, used in some instances to try to obtain the cooperation of recalcitrant members in accept-

ing the classification and differential definitions established by the code authority. The persuasion of the code authority was reasonably successful."

Letter of March 10, ——— small manufacturer:

"The open-price provision in our code, coupled with a minimum cost for the industry, will unquestionably result in all prices being the same. It practically is the same as if the code had ordered price fixing.

"We did file a price list with ——— ——— at $12.25, but the code authority did not send them out and we later withdrew them because we could see that it wouldn't help us any.

"The large companies have a list price of $14.00."

X. Code authority and competitors tried in vain to induce a member to raise prices to the common level. (The code provides for an open-price system without a waiting period.)

Letter of March 9, ——— manufacturer.

"Pressure has been brought to bear upon our company by code authorities and competitors in the industry who have tried to persuade us to raise prices which we have on file. The nature of the pressure has been their objection to our filed price being from 1 to 3 cents below the prices filed by our competitors. We have taken no action."

XI. Code authority and competitors ask withdrawal of filed prices and makes determined effort to establish uniformity. (The code provides for open prices with a waiting period and for no sales below cost.)

Letter of March 9, ——— manufacturer.

"We think a determined effort has been made to establish a uniform price for standard—all over the Eastern United States, that is, broadly speaking, east of the Rockies, but without much thought to varying conditions existing among manufacturers. This has been done by meetings, visits of agents, and letters from headquarters. We have resisted in some cases, and kept our prices down below what we were told others were asking, where we thought the cost did not justify any higher price. But, as a general rule, we believe we have been getting for our goods as much as the average factory says it has been getting. There are a number of factories which are openly way below the majority. We believe there are enough others who are somewhat below us to make it difficult for us to get our share of the business.

"There are always goods in every merchants' or manufacturers' hand which have poor vendibility on account of style, soilage, damage, defects, shop wear, etc. These are known to us as 'close-outs'. One can't allow these things to accumulate. Stocks must be kept salable. Usually the quicker such things are sold, the better. The first cut is the least loss. We realize that the question of close-outs is a difficult one from everyone's standpoint but when the code authority says we can't sell close-outs until our price is O. K.'d by them, we protest that this is going too far—unless they want to take them off our hands at our prices.

"It seems to us that to force every factory to make and to get the same price for a carefully described and comprehensive line of ——— ——— without regard to varying productive conditions and selling obstacles, is to destroy the balance worked out by years of competition and thereby enrich some and impoverish others, unless you go to the whole length and assign each factory a definite quota of the business.

"We would like to be definitely advised, if it is within your province to do so, just how far we have to obey the code authority in the matter of price, standards of manufacture, sale of close-out goods, etc."

XII. Prices were fixed at a meeting at which the complainant stated that he was outvoted and the prices put higher than he wished. (Pending the determination of an allowable cost composed of individual direct factory cost plus weighted average indirect allowable cost after a survey of the estimated cost of reasonably efficient plants. There is also a provision for an open-price system with a waiting period.)

Letter of March 5, ——— manufacturer.

"Our price system looks like a closed price to us, as the code authority at their first meeting set up a delivered price of $11.50 for the whole State, we voting for a plant price, the only price we thought was fair.

"It seems to us that the large plants in the region want a delivered price, and want that high enough to that they can ship into our territory at a profit. We do not believe that you will aid recovery by charging more for a product than it is worth."

XIII. The code authority sent out a suggested list of prices which the members feared to cut. (The code provides for an open-price system with a waiting period

and for fixed cash and quantity discounts, minimum down payments, and, after the approval of the administrator, the specification of standard equipment.)

Letter of March 1, ——— ——— manufacturer of apparatus.

"We have before us, as received from the code authority or the ——— ——— Association, we do not know which, a schedule ———. As also a schedule of prices listed as extras and not included in the regular equipment, at so much each, if they are specified in the purchaser's specification.

"We have been holding strictly to these prices for fear they were authorized by the code authority and might possibly get us in bad if we did not sell at the schedule price for extras. There are a great many items priced in this list that we can produce probably a lot cheaper than some of the bigger corporations who have terrific overhead."

Letter of March 5, ——— small manufacturer of apparatus.

"At the first meeting of ——— ——— ——— manufacturers there was some talk of bringing some pressure to bear upon firms who priced their apparatus lower than some of the others, but so far there has been no pressure brought to bear on us leading toward a raise in our price to customers."

XIV. Small manufacturer complains that pressure to raise prices has been exerted by larger competitors whose officers are members of the code authority. (The code provides for an open-price system with a waiting period and for establishment of standard terms of sale and cash discounts to be determined by regional committees. A formula for allowable cost in the code.)

Letter of March 27, ——— small manufacturer.

"We do not think that there has been any narrowing of the spread in prices filed as the prices filed were practically all arrived at by collusion before the first ones filed and all prices now are arrived at same way, other than exceptions, which are frequently filed to meet local conditions and competition from other conditions and materials with which we compete.

"There is continual pressure brought to by the regional committee and the larger competitors in the industry to keep the price agreed upon always the same under whatever conditions and to regulate the methods of selling and terms of all kinds which are greatly to the advantage of the large manufacturing units in the trade. As an example of what we personally are up against, we manufacture a small line comprising comparatively few items of the general ——— ——— products industry. These in times past have been sold by mail as our line was too small to warrant covering our wide territory by traveling salesmen. As this method of selling has been much cheaper, we have been able to make slightly more advantageous terms to the trade which held our customers as against competition where salesmen called on them frequently. With prices and terms all absolutely uniform, the companies with salesmen soon have our share of the business.

"For many years our chief product was the ——— ——— and on taking considerably lower rate in carloads, it was sold at a lower price in carloads than in mixed cars with other items taking a higher rate. Now, under present conditions, the same price is quoted for ——— ——— in mixed cars as in straight cars which can be delivered at much less cost. This operates practically to prohibit carload sales as on account of the present limited demand, few dealers will stock carloads when a part of a car can be purchased at the same unit price.

"Our member of the code authority is general manager of a company controlling 22 plants, nearly one-half of all the plants in our line in our regional territory. You may be sure that regardless of the high character of a man in this position, it is not to the advantage of a small manufacturer to have his business at the mercy of such competitors.

"Prices have been raised from 25 to 200 percent, varying in different districts. Most of these prices were put into effect shortly before the adoption of the code. Under N. R. A., costs have advanced from 25 to 40 percent."

XV. Pressure to raise prices in order to protect the "high-cost producer." (The code provides for an open price system, with a waiting period required except when prices are increased, and for no sales below individual cost, except to meet competition.)

Letter of March 23, ———, manufacturer.

"Pressure has been brought by members of the code authority and competitors in the industry with the idea of raising prices, so that the high-cost producer can be protected in his local market. To this we have never agreed."

XVI. Exertion of pressure tended to increase prices beyond what consumers could absorb. (The code provides for open prices with a waiting period.)

Letter of March 20, ———, manufacturer.

"There was a tendency to exert pressure on the part of manufacturers and code managers in this division who were desirous of having the manufacturers quote prices based on certain costs, but on account of the great unemployment, the public could not absorb our increases, as ——— is still considered a luxury, while food and clothing are necessities."

XVII. Large concern asks smaller competitors to agree to quote the same prices. (The code provides for open prices with a waiting period in all divisions but one; and for the use of either individual cost or lowest representative cost in all divisions.)

Letter of March 1, ——— manufacturer:

"In December 1933, just prior to the signing of the code, a representative of the ——— ——— Co. called the writer on the telephone, furnishing prices on ——— which showed a marked increase over previous quotations and requested that we "go along" with the others. The same procedure was used last June when Mr. ——— of the ——— ——— Co. called me the ——— ——— Manufacturers Association to draw up a code and we in turn were furnished with prices which other manufacturers had named. It was stated by Mr. ——— at that time that we might quote 5 percent under those prices without objection from his group."

Letter of March 23, ——— manufacturer:

"We were asked by a very promising outstanding concern to agree to follow their prices but we found that prominent as they were they were evading every provision that they had asked us to adhere to. This can be proven."

Letter of March 20, ——— manufacturer:

"Our ——— division is a new department. We are finding it difficult to break into the market at prices on a level with competitors and a product unknown. Under the wording of the ——— code if we were to file a reduced list, competitive industry would either have to do likewise or make business dealing very unpleasant.

"One company filed a price lower than the rest and they finally sent in prices on an equal basis. The cause is self-evident.

"There is a new set of prices now being circulated. We have not filed any as yet—the tendency is upward.

"We were urged to place a price in line with the rest of the industry. The fact that all prices are equivalent is sufficient evidence of a compact."

Letter of April 11, ——— small manufacturer:

"It has been suggested that we raise most of our prices. The raises suggested have in the light of our costs been too much. We object to having prices set for us because we feel as a small manufacturer. The large manufacturers have a greater sales coverage and because they nationally advertise some of their products have a distinct advantage over the small manufacturer, which advantage can only be offset by a lower price. Small manufacturers, provided they at lower prices than the larger manufacturer, whose greater costs are usually the result of greater sales coverage, nationally advertising, etc. If such large manufacturers elect to develop such conditions then the added costs that are developed because of these situations should mean a higher large manufacturers have some inherent advantages that they do not wish to surrender and at the same time they do wish the smaller manufacturer to surrender his inherent advantages."

XVIII. One big concern was telling the customers of a price cutter that they could meet his prices and put him out of business. (The code provides for open prices without a waiting period and for no sales below individual cost except to meet competition.)

Letter of March 1, ——— manufacturer:

"We submit price list issued by us to comply with the ——— ———Industry Code. Please note the lines surrounded in red, which was inserted by us as a warning to our 110 competitors, a few of whom were murmuring threats to our customers, intimating that they were going to send us to Leavenworth as 'price cutters.' As a concession to these parties we did advance our prices after the code went into effect, so that we would not be over 20 percent below our competitors' postcode prices. We are the only concern in the industry which sells for cash only to dealers and jobbers, by mail and without salesmen. The savings so gained are considerably more than 20 percent. We have not joined the ——— ——— ——— Association because we do not wish to be outvoted 100–1.

"We can prove that one of our competitors whose officer is 1 of the 6 members of the code authority, has been telling our customers and their own whom they feared might come with us as some have since, that they were in.

control now so that they can fix prices and put concerns like us where we belong. This concern with the exception of ourselves and 1 or 2 other independents, dominates the ——— ——— industry.

"Yesterday we received a statement, as follows, from this concern relayed by the code authority manager's office: 'To the code authority and all ——— manufacturers: We have approximately 110 obsolete ———, all discontinued models and sizes. Our extreme price on these will be 20 percent beyond the regular dealer price, and will be offered to our customers only. No quotations will be made on any of these to any trade not regularly buying from us in 1933 and 1934.'"

"We know to a certainty that there has been all sorts of collusion in price fixing in addition to the monopoly, except for a few independents."

XIX. Trade association has exerted pressure to bring the prices on one member of the industry up to the level of the prices quoted by competitors. (The code provides for open prices with a waiting period and for no sales below cost except to meet competition.)

Letter of March 2, ——— manufacturer:

"There has been mild pressure brought to bear upon us to have us set our prices at the same level as prices of competitors. It has been emphasized to us that if we established lower prices than competitors, our competitors would merely revise their prices and a price war would ensue. This pressure has come principally from the ——— ——— Manufacturers Association."

XX. Various members of the industry used pressure to make a smaller competitor raise his filed prices. (The code provides for an open-price system without a waiting period.)

Letter of March 14, ——— fabricator:

"Pressure has been brought to bear upon our industry by various members of the industry, but not by the code authorities, to raise prices which we filed on ——— 1933. We had filed the lowest quantity prices and a number of the large fabricators wished us to revise our quantity schedule, as well as our base prices. We did revise the base prices upward, but the quantity schedule we refused to revise."

XXI. Pressure has been used to raise prices to consumers and jobbers. (The code provides for open prices with a waiting period and for no sales below cost.)

Letter of April 2, ——— manufacturer:

"Pressure has been exerted by our competitors to raise prices almost double to the consumer and $—.— to jobbers.

"The code authority office sends us no information."

Letter of April 6, ——— ———, manufacturer.

"No code authority was used, but members of the code introduced considerable pressure in an endeavor to capture for themselves certain advantages in the industry. These attempts with one or two exceptions were made by persons that were not actually engaged in the industry at the time the depression really began and it is quite evident that a certain class of manufacturers were trying to convert for their use a very liberal proportion of the sales outlet and will succeed if their plan is allowed to operate."

Letter of April 6, 1934, ———, small manufacturer.

"The open-price policy spells disaster for the small manufacturer in our industry. There are altogether, less than a dozen manufacturers of ——— ——— in this country, two of which number are extremely large organizations, who have been attempting to dominate the industry ever since we can remember. Prior to the N. R. A. we at least had a chance of selling our goods, little as it was, at prices that gave us a profit. Now, we are confronted with a policy that practically disables us from marketing our merchandise * * *.

"The large manufacturer, having his advertised brands well established in the schools, has very little competition, since most schools insist on advertised brands, and maintains his high prices there, but he sets up new brands of equal quality at lower prices to meet the manufacturer who dares file low prices. In other words, he uses the open-price policy as a whip over the small manufacturer to raise prices, and if the small man does not fall into line, he will be met or even beaten with new brands, on the little business he may be able to obtain, while the large manufacturer gets his high prices for his advertised brands.

"This is an exact condition in our industry.

"There is continual pressure brought to bear by the regional committee and the larger competitors in the industry to keep the price agreed upon always the same under whatever conditions and to regulate the methods of selling and terms of all kinds which are greatly to the advantage of the large manufacturing units

in the trade. As an example of what we personally are up against, we manufacture a small line comprising comparatively few items of the general ——— ——— products industry. These in times past have been sold by mail as our line was too small to warrant covering our wide territory by traveling salesmen. As this method of selling has been much cheaper, we have been able to make slightly more advantageous terms to the trade which held our customers as against competition where salesmen called on them frequently. With prices and terms all absolutely uniform, the companies with salesmen soon have our share of the business.

"For many years our chief product was ——— ——— and on taking considerably lower rate in carloads, it was sold at a lower price in carloads than in mixed cars with other items taking a higher rate. Now, under present conditions, the same price is quoted for ——— ——— in mixed cars as in straight cars which can be delivered at much less cost. This operates to practically limited demand, few dealers will stock carloads when a part of a car can be purchased at the same unit price.

"Our member of the code authority is general manager of a company controlling 22 plants, nearly one-half of all the plants in our line in our regional territory. You may be sure that regardless of the high character of a man in this position, it is not to the advantage of a small manufacturer to have his business at the mercy of such competitors.

"Prices have been raised from 25 percent to 200 percent varying in different districts. Most of these prices were put into effect shortly before the adopting of the code. Under N. R. A., costs have advanced from 25 to 40 percent."

XV. Pressure to raise prices in order to protect the "high cost producer." (The code provides for an open-price system, with a waiting period required except when prices are increased and for no sales below individual cost, except to meet competition.)

Letter of March 23, ——— ——— manufacturer.

"Pressure has been brought by members of the code authority and competitors in the industry with the idea or raising prices, so that the high-cost producer can be protected in his local market. To this we have never agreed."

XVI. Exertion of pressure tended to increase prices beyond what consumers could absorb. (The code provides for open prices with a waiting period.)

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"There was a tendency to exert pressure on the part of manufacturers and code managers in this division who were desirous of having the manufacturers quote prices based on certain costs, but on account of the great unemployment, the public could not absorb our increases, as ——— is still considered a luxury, while food and clothing are necessities."

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"In December 1933, just prior to the signing of the code, a representative of the ——— ——— Co. called the writer on the telephone, furnishing prices on ——— which showed a marked increase over previous quotations and requested that we 'go along' with the others. The same procedure was used last June when Mr. ——— of the ——— ——— Co. called me over the telephone, stating that he had been selected by the ——— ——— Manufacturers Association to draw up a code and we in turn were furnished with prices which other manufacturers had named. It was stated by Mr. ——— at that time that we might quote 5 percent under those prices without objection from his group."

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"One company filed a price lower than the rest and they finally sent in prices on an equal basis. The cause is self-evident.

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"We can prove that one of our competitors whose officer is one of the six members of the code authority, has been telling our customers and their own whom they feared might come with us as some have since, that they were in control now so that they can fix prices and put concerns like us where we belong. This concern, with the exception of ourselves and one or two other independents, dominates the ——— industry.

"Yesterday we received a statement, as follows, from this concern relayed by the code authority manager's office: 'To the code authority and all ——— manufacturers: We have approximately 110 obsolete ———, all discontinued models and sizes.

"Our extreme price on these will be 20 percent beyond the regular dealer price, and will be offered to our customers only. No quotations will be made on any of these to any trade not regularly buying from us in 1933 and 1934.

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"This is an exact condition in our industry."

STATEMENT AT PRICE HEARING, JANUARY 9, 1935

(By Corwin D. Edwards, technical director of staff, Consumers' Advisory Board)

EXPERIENCE WITH PRICE-FIXING UNDER THE CODES

I. Business men have attempted, by the use of code provisions, to establish prices so high as to be obviously unfair to consumers. In some cases they have succeeded. Consider the price of common brick. From 1915 to 1933 the average delivered price was never as high as $13 except during the building boom of 1919–20. In 1926 it was $11.72; in 1929 it was $10.65. Today the average filed price for such areas as New York, Pennsylvania, Ohio, Illinois, Vermont, and Georgia, given us as representative by the code authority, is more than $15, nearly a third higher than in 1929. Yet there is reason to believe that the present scale of wages is little, if any, higher than the actual wages paid from 1921 to 1929; and a liberal estimate for increased fuel costs would raise the total cost of producing brick only 2 or 3 percent. The significant factor in the price increase seems to be the Code for the Structural Clay Products Industry, which forbids prices below individual direct factory cost plus the weighted average indirect allowable cost as determined by the code authority. As yet N. R. A. has not reviewed the code authority determinations of weighted average indirect allowable costs, nor, except for one southern district, has N. R. A. obtained the data upon which these determinations are based. In this district costs were reported ranging from $3.45 to $17.08. Of the 45 reporting firms, 37 showed costs below $9.50 and 18 showed costs below $8. The code authority set a minimum price of $10.50.

Question has been raised by the Code Authority of the Structural Clay Products Industry concerning the basis of calculating the prices of brick. The Consumers' Advisory Board believes that the prices used here are as accurate as can be obtained. If the points made by the code authority were accepted, they probably would require an increase of several dollars of the prices mentioned in the fourth and fifth lines. This would involve saying in the eighth line that present prices are nearly as high as in 1929.

It is not necessary to argue that boom prices established in the midst of depression are neither fair to the consumer nor conducive to recovery. Later speakers will offer similar illustrations from other industries.

The determination of costs in such cases involves basis issues of policy. Shall costs include charges for excessive investment and for unused capacity? In the extreme case, shall the lumber industry be allowed to charge upon its 13 or 14 billion board feet of annual production the cost of a capacity to produce more than four times as much? Moreover, since costs often differ widely, shall the established price cover the costs of the most efficient, the average, or even the least efficient producer? It is highly questionable whether organized business groups should be permitted to settle these issues by agreement, thus making a matter of business judgment the law.

II. If the administration could get and watch all the facts about each industry, the requirements of administrative approval might sufficiently safeguard unfairness in these legally protected prices. But this cannot be done. In the business-furniture industry, for example, when a manufacturer has set his price upon a so-called "base product", schedules established by the code authority tell him how much more or less he shall charge for other items in the same line. How can the Government possibly watch the use of this power in the prices of perhaps 17,000 items? A Government statistician told me last week that merely to maintain in Washington a file of the prices of commodities sold under N. R. A. codes would require an establishment equal to that of the Library of Congress.

The impossibility of getting costs is even greater than that of watching prices. In many industries business men are reluctant to supply cost information. In many other industries cost information is entirely inadequate. In the paint and varnish industry, for example, the code authority has the privilege of determining the cost of processing which shall be used in calculating the price below which no one may sell. An able firm of accountants was employed to make the determination. It attempted to get figures from 164 of the 2,000 members of the industry, and was able to get usable figures from only 34. Among these figures the variations were enormous, the highest cost submitted being as much as two or three times the lowest. The accountants themselves say, "The results displayed, it should be clearly understood, are not, in our opinion, acceptable in their present form as a basis for proclaiming lowest reasonable costs or loss factors, according to the provisions in the code, and we do not submit them as final and representative." Yet N. R. A. has approved processing costs for this industry, and under the code no manufacturer may establish his selling price upon the basis of lower costs.

Again, in retail solid fuel nearly every group of costs examined has been patently incomplete and inadequate. Here is a chart listing for certain regions in the industry the inadequacies in the cost data. Each "X" indicates a point at which N. R. A. has had to give the force of law to a decision without having the facts which a good accountant would need to make an ordinary business judgment.

Of course, N. R. A. has attempted to prevent the establishment by code of unduly high prices. In the case of lead pencils, in which the code authority was to determine "a fair minimum price", the proposed price schedules submitted to N. R. A. evidently interpreted fairness so liberally as to protect the least competent producer. Analysis of these schedules indicated that the proposed price would have guaranteed by law a profit margin as high, in particular cases, as 60 percent. In this case the proposed prices were disapproved and the code provision which authorized them was stayed. In other cases unconscionable prices have been greatly reduced by N. R. A. upon review. Consider certain examples of emergency prices (supposedly based upon lowest reasonable cost) in the retail solid fuel industry. Here, for certain areas, are the prices proposed by the code authority and the prices eventually approved by N. R. A. after review of the costs.

Region	Proposed price	Approved price	Percent disallowed
State of Illinois (division 25), Trade Area No. 2	$2.45	$2.05	20
Westchester (July)	4.00	3.15	27
Denver	2.19	1.75	25
Knoxville	2.21	1.91	16
Haverhill, Mass	3.43	2.90	18
St. Louis and East St. Louis	2.10	1.87	12
Seattle	4.00	3.50	14
Indianapolis and Marion County	2.40	2.25	7

III. The effect of the codes upon prices has been due not only to formal code provisions but to the fact that code authorities representing sellers, but not buyers, have been entrusted with the privilege of administering the codes. Somestimes the privilege has been used to establish conditions far different from those which might be expected by a naive reading of the code. The Business Furniture Code, for example, gives divisional committees the right to make recommendations to the respective divisions. Steel Shelving Division has used the right by recommending to members of the division that they allow no more than 15 percent of list price in buying used shelving, that they charge not less than 85 percent of list price in selling such shelving, and that they charge the full price of new products upon reconditioned shelving.

In several industries the open-price filing system has been supplemented by unofficial action. In the canvas goods industry the code authority of the retail section gave its approval to the use of a national standard awning price list prepared by the National Tent and Awning Manufacturers Association, and certain groups in the industry brought pressure to bear to induce members of the industry to file their prices as 65 percent off this list. However, departure from filed prices became so flagrant that the open-price provision of the code has been stayed. In the tag industry the open-price system has developed into a price book by a process both simple and ingenious. Members of the industry who do not choose to file prices are bound, according to the code, by the lowest prices and most favorable terms on file. In practice only one or two large concerns file prices and these prices are compiled into a price book which is circulated to the rest of the industry to inform them of the prices they must follow unless and until they file prices of their own. The language of this book is interesting:

The price for any lower quantities than listed quantities shall be the same as the total selling price for the lowest quantity on file. For instance, where the 5 M rates is the lowest quantity rate on file and is $1 per M, the rate for 1 M would be $5 and the rate for 2 M would be $2.50 per M * * *

"When any company not essentially in the printing business, operates its own printing department, it is not be classed as a printer or given printer's discounts.

"The Federal Government in all its branches, as well as all State and Municipal agencies, are quoted consumer prices * * *

"Plain stock tags may not be combined with printed or other made-to-order tags to establish a quantity rate, even though both printed and plain tags are of the same size, unless the entire total of both plain and printed tags is priced as though all were printed * * *

"CX quality shipping tags are to be sold to the jobbing trade only and only in quantities of not less than 10 M of a size."

In certain other cases, although the procedure is not clear, the results of open price filing are remarkable. In the electrical industry there is record of case after case in which prices filed and bids upon contracts have been identical.

A representative case is that of small electric motors, in which important electrical manufacturing companies filed identical prices and identical quantity discounts. The achievement was all the more notable because a different set of discounts was filed for each large customer; and the manufacturers in some manner arrived at an identical degree of price discrimination for each customer. One buyer of electrical products explains the uniformity by saying: "One manufacturer was frank enough to tell me this week that the association set the price and any deviation would likely be serious as far as whatever disciplining the association might do."

Concerning the galvanized ware manufacturing industry, we have recently received a statement as follows: "In considering a contract for next year on steel pails, we were very blandly informed by the manufacturer that he had nothing to do with the prices, that these were set by the Steel Pail Institute, and he had no alternative except to follow along."

Provisions against selling below cost, like open-price provisions, may be used largely as a means to other kinds of price control. At the code authority conference last March the Executive Director of the Consumers Advisory Board read a letter from the secretary of a code authority which had strayed into our hands. It was as follows:

"Your filed prices were roughly 10 percent less than those filed by your competitors. In view of their experience in the manufacturing of a similar grade, they feel it doubtful that you could justify such prices. Consequently, I feel sure that you will want to revise your prices so that they will bear a closer relation to those of your competitors. They pointed out that in the event you found yourselves unable to cooperate, it was the opinion of some of the members that

they might have to resort to procedure provided * * * by the code. Under this provision, a member may complain to the code authority in regard to your price schedule. This will lead to an investigation to ascertain whether this price can be justified * * * Such procedure is of course unpleasant and costly. I am sure this matter can be straightened out without resorting to any such action.

"It was pointed out that in the event the investigation proved that this price schedule could be justified on the basis of your own cost, that the members would then be forced to meet your price. This would then destroy your existing competitive advantage and merely serve to lower the existing price structure to no avail."

At the close of the session, the secretary of another code authority, wholly unconnected with the incident, came up to make excuses for having written the letter.

The mere lack of adequate accounting systems, or of N. R. A. approval for a cost formula, has not always prevented the use of provisions against selling below cost. In the wallpaper manufacturing industry a schedule of prices was developed at a conference at Lake George, N. Y.; and sale below these prices has been regarded, prima facie, as sale below cost. The following extracts from the code authority's minutes are illuminating.

"Until further revision base prices adopted by the advisory committee at the Lake George meeting shall be adhered to, and all quotations lower than such base prices will be considered sales below cost, unless justified by the mills making such quotations. * * *"

And again:

"With the exception of ——— personal contact was established in each case. This concern has submitted figures regarding which complete agreement has not been reached. However, a letter to the trade indicating withdrawal of all prices below the Lake George schedule as issued by this concern has come to the executive secretary's attention. Satisfactory closure of the complaint regarding Commerical is contingent upon official verification of this letter as a general policy, or final agreement on the cost figures."

IV. In certain industries prices have been kept competitive by the breakdown of provisions intended to fix prices. Codes cannot force people to spend more than they have nor enable businessmen to sell more than customers will buy. Hence the attempt to raise prices by fiat has let to widespread bootlegging of goods in violation of the codes. The bootleggers have found a ready market because consumers, most of whom would have supported the labor provisions of codes, have not seen either fairness or sense in legalized price fixing.

The code director for the Birmingham Master Printers Association, speaking at the Typothetae convention, complained as follows:

"We found as one of the greatest deterrents in our effort to enforce code compliance the extreme reluctance, not to say unwillingness, of the buyers of printing to present any evidence which might help us in our conviction methods. It is a perfectly natural set-up. We are not going to find buyers working with the code authorities in the enforcement of our prices and we should not expect it."

Notorious cases of bootlegging, such as the lumber industry and the cleaning and dyeing industry, need not be described here. I shall stop at one less advertised example—the fur dressing and dyeing industry. The industry's problem was the reduced use of furs in depression and the increased number of establishments which appeared as unemployed skilled workers set themselves up in business. The industry's remedy was to fix minimum service charges upon the basis of the wage rates paid by New York union shops—a procedure which, in the rabbit dressers division, raised service charges suddenly from the prevailing rate of 4 and 4½ cents to the code rate of 7 and 7½ cents. Tempting profits were thereby provided for nonunion shops and shops outside New York. Within 3 months the chief proponent of the code service charges declared: "We got the service charge; we worked hard on it, and by the time we got back those that lived up to it found themselves losing their capital, losing their business, losing their customers, and it has made it possible for the violators to go in and become big business men, do a big business at our expense." Four divisions of the industry obtained minimum service charges; and in an average period of about 3 months the charges were suspended at the request of the industry itself.

In many industries the evasion of the code has been indirect and the code authority has been unwilling to surrender its attempt at price control without further struggle. In the crushed stone, sand, gravel, and slag industry the code authority feels that to prevent evasion of filed prices it must prevent the advance disclosure of future prices. In the sanitary napkin and cleaning tissue industry,

changes in advertising allowances are reported as ways of evading filed prices. In the machined waste industry, where prices were filed by brand name, a producer wishing to make a special price had only to file a price for a new brand. In July the code authority suspended price filing and in December proposed to delete the open price clause from the code. In the cork insulation division of the cork manufacturing industry, producers subject to a price filing system found themselves in competition with distributors who, not being under the code, could vary their prices at will.

The same situation developed in the commercial refrigerator industry, the lamp chimney division of the American glassware industry, and the lumber manufacturing industry.

In such cases, the usual proposal has been to put more regulations in the code. Thus a simple clause about open prices or selling below cost develops a demand for resale price maintenance, mandatory classification of customers, regulation of terms of sale, registration of long-term contracts, elimination of guarantees against price decline, prohibition of joint sales, regulation of quality guarantees, and other similar rules. In the extreme case a combination of many such rules is proposed as a "merchandising plan"—a legal strait-jacket for an industry's way of doing business.

Even where the break-down of price fixing has left actual prices substantially free, the process has been harmful to the consumer. Business attention has been turned from management to code politics. The naive enterprises which took their code seriously and obeyed it have been penalized regardless of their relative efficiency and inversely to their relative integrity. Buying and selling have proceeded under a new speculative risk that an N. R. A. decision might alter the existing prices. Code authorities have collected from their industries, and indirectly from the public, large sums of money to be spent in administering unduly complicated codes. For the most part these effects are round-about, and not measurable. But the consumer's interest in them is as great as his interest that industry shall be economically regulated and that business success shall depend upon efficient management rather than intrigue.

Emergency Price Experience

STATEMENT AT PRICE HEARING, JANUARY 9, 1935

(By Ben W. Lewis, Consumers' Advisory Board)

The Consumers' Advisory Board views with decided misgivings the statement in the resolution covering this hearing that the Recovery Board "recognizes the value of * * * emergency price provisions." Historically, we believe the concept of "emergency price" to have been the product primarily of an emergency within the ranks of National Recovery Administration itself—a fear grown to panic proportions that minimum price procedures were becoming too firmly entrenched in formal code provisions. Refuge was sought in a ceremony to be invoked only on rare occasions when, by virtue of an emergency proclamation and the recital of an appropriate cost incantation, price practices hitherto suspect were to emerge wholesome and pure. But the experience of the past months under the various clauses that have been devised to express the emergency concept has demonstrated rather clearly that price fixing under the cloak of an emergency is still price fixing, and immune to none of its traditional infirmities.

"Price fixing", though called "emergency protection of lowest reasonable costs", still exudes the same aroma.

One might well remark upon the confident spirit in which the emergency price experiment was entered upon, in light of what, at the outset, seemed its inevitable result. The complexities of maximum price fixing are notoriously great even in the field of public-utility regulation, with its simple monopoly conditions, audited accounts, and experienced pricing machinery, backed by tradition and directed to the accomplishment of definitely limited ends. Yet these difficulties are dwarfed by comparison with the task of setting minimum prices in the very midst of competing brands and methods, supported only by inadequate and often padded accounts (if, in fact, accounts of any sort are present), and with new and cumbersome facilities seeking blindly the achievement of purposes too vague to be named.

Thanks to that confident spirit, a substantial record is now available—in our judgment a record of failure and futility; the collapse of an idea too narrowly conceived and far too trustingly administered.

From the outset, costs were deemed to be of vital importance and were billed to play a dual role in the emergency price procedure. They were to serve at once as the measure of the interests sought to be protected and as guarantor to the public that price fixing should not become price extortion. The Consumers' Advisory Board has never worshipped at this shrine. In our judgment, costs once incurred in a dynamic competitive society, constitute no criterion of proper prices.

But the issue has been lifted bodily from our hand and determined decisively in the arena of experience. On the record there made the attempt to lend some semblance of scientific respectability to emergency prices by identifying them with "lowest reasonable" or "representative" costs can only be abandoned. Reliable cost data have been almost completely absent from actual price determinations, and in no instance have they afforded any objective measure of representativeness or reasonableness. By its own standards, emergency price fixing has failed.

In none of the cases in which emergency prices have been set has it been possible, in fact, to do more than to pay lip homage to costs. In retail "solid fuel", the price determinations made originally by the industry bore an indistinguishable relation to any cost figures which were available. Far from reflecting any data that could be said to represent "lowest reasonable costs", prices were set at levels dictated by wishful (and frequently mistaken) conclusions as to "what the traffic would bear." When, after months of maneuvering, cost data began to trickle into Washington for review, the coal section of the Division of Research and Planning was overwhelmed by its paucity. The significance and reliability of the figures which could even be considered for use were such that only after weeks of study and arbitrary revision was the Division of Research and Planning in a position to issue "cost" tables and charts. The questions still remained: Which items of cost are to be included in the calculations; and which firms (actual or synthetic) are to be elected to the fortunate group whose costs are to be covered and more than covered by the prices set? It is clear, of course, that no objective accounting considerations could dictate the answers, and any uncertainty on this score can easily be dissipated by directing attention to the debates that attended the final actions taken by the special committee on retail solid fuel prices.

Bear in mind the multiplicity and complexity of even the subsidiary problems that demanded definite decision: Do selling expenses constitute properly recoverable costs? What are reasonable expenditures for executive salaries? What differentials shall be recognized between deliveries in trucks of varying sizes, and between deliveries on the curb and in the bin? How many price floors shall be set in a single area: One representing a lowest reasonable cost under all the circumstances, or separate floors for equipped dealers and truckers; and, if the latter, shall there be separate floors for coal trucked from varying points of origin? What price or prices shall be set on anthracite coal? On wood? What differentials shall be set in recognition of the peculiar position of water-borne fuel, and to meet the fact that coals from a given mine entering a metropolitan area at different points may bear substantially different freight rates? And ask with reference to these: What cost books, and whose, can be depended upon to throw light even in the general direction of a solution?

The experience of retail solid fuel in this regard has been duplicated, on varying scales and with varying emphasis generally throughout the group of emergency cases. The search for usable cost data in the ice industry was doomed to early failure, and the selection of "representative operations" and resultant minimum prices was patently arbitrary. While it is no doubt true that certain reliable price data were present in the "retail tire" emergency to an unusual extent, it is also true that the price minima were molded consciously to preserve particular outlets of distribution; and in the fixing of differentials between the nationally branded and other tires (an action taken midway in the emergency), it is clear that cost considerations were subordinated entirely to the pressure of the market.

The prices announced for the four standard products of the cast-iron soil-pipe industry were set, in desperation, without benefit of cost data worthy of the name. And in the general state of ignorance concerning the costs of retail and wholesale distribution, it will be appreciated that the emergency cigarette mark-up, too, represents a similar lack of identity between ascertained costs of doing business and lowest lawful price.

Let us make the point clearly; reliable and significant cost figures have been almost entirely absent, and even to the limited degree to which they have been available in fact they have dictated no prices and determined no conclusions.

This is not strange, perhaps, in the abstract, but it becomes highly significant with the realization that the prices set are known as "lowest reasonable costs", and that the concept of emergency price determination here in controversy reflects ostensibly no guiding principle other than cost protection.

But, even if full and reliable cost data had been available, the result must still have been unimpressive. The record is not one alone of administrative break-down and failure; more tragic still, it is a record of futility. The net result of the emergency declarations, in terms either of recovery or reform is something less than zero.

It is difficult to believe that the tire industry is fundamentally on a sounder basis as the result of its suspension of price cutting during the past summer. The experiment was characterized by violations of price restrictions, slackening of sales, and strife and bickering within the industry. When, moved by the sheer weight of the administrative burden and the growing volume of discontent, the administration terminated the emergency, not a significant item in the total picture had been openly affected.

Similarly, in the case of cast-iron soil pipe: As a result of a sharp break in prices following a long period of gradual decline, the industry requested and received emergency price protection. After a period of 3 months the protection was removed, and here, as well, without the slightest alteration in the basic structure of the trade. True, in both cases the price cutting of last winter has not been openly resumed as yet, but in the absence of any semblance of major change in underlying forces, it must be assumed that those forces are at present in a state only of temporary paralysis induced by enforced inactivity or that the emergency months constituted only a glorified "waiting period", conducing on a grand scale to the very evils which have led to the condemnation of waiting period provisions in open price plans. The cast-iron soil-pipe industry still produces at a bare fraction of its capacity, and the same conditions that permitted and promoted the price warfare of a year ago still obtain in the case of rubber tires. We hold no brief for the prevention of price declines, but we doubt that price stability so tenuously supported is, even to the industry, worth its cost.

The "waste paper" emergency declaration produced a situation fully as hectic as that which moved the administration to take its emergency action. The basic forces here were patently incapable of being affected—certainly incapable of being corrected—by the mere setting of prices. The administration found itself in the middle between contending groups backed by interests outside the industry itself. A price differential which had long distinguished the eastern from the western markets was ignored in the price determination, disrupting traditional economically grounded relationships.

Buyers revolted from code prices, and wholesale violations were charged. After a brief renewal the emergency collapsed. A resumption of the old emergency was preferred to a continuance of the new. It is difficult to believe that the industry and its customers have in any way benefited permanently from the experience.

The lumber price floor brought nothing but violations, curtailment of buying, and revolt in the industry.

The only result reliably reported from the current "insecticide" emergency to date is that sales have been completely stopped.

Retail solid fuel adds to its record of administrative break-down the further items of price violations, unconscionable prices during the months prior to administrative review, buyers' strikes, the crippling of efficient and legitimate channels of distribution, strife and discontent, together with effects now in the making but still too vague even to be guessed at by those engaged in the determination of price policy. And when the emergency is lifted, the industry, strained and wrenched, will be, basically, precisely where it was in the spring of 1934.

Regarded in their most favorable light, the emergencies already endured have furnished period during which an industry torn by strife might pause of rest. The outward manifestations of the struggle have for the moment been stayed by truce. Not infrequently, as we have seen, the breathing spell itself has been disturbed by new difficulties and members and customers have been menaced by new hazards—the special product of the emergency period itself. But even a quiet breathing spell must be looked at askance. In a very real sense it must be regarded as affording an undesirable delay in the working out of industrial evolution and development; particularly so to the extent that it revivifies and strengthens forces resisting inevitable change.

We are brought, thus, by the logic of experience to question the very fundamentals of the emergency price policy. The Consumers' Advisory Board believes that most composites of industrial difficulty are not properly to be thought of as emergencies at all; and that genuine industrial emergencies are misconceived

when they are approached and dealt with solely in terms of selling prices instead of the basic forces responsible for and manifested by the collapse. Refer again to the experience of the past summer and fall:

Is the retail solid fuel industry suffering fundamentally from drooping prices, or is its basic difficulty one of chronic oversupply or of painful transition in many communities from an outmoded method of distribution to a new and cheaper form—a change made even more unpleasant in certain instances by reason of the consequent disruption of local price understandings?

Does it require great insight to perceive in the wholesale and retail cigarette situation something beyond mere predatory price cutting—something suggestive, perhaps, of a major shift in distributive systems?

Can one reasonably doubt the presence in the lumber industry of chronic forces far too deep and complex to be subjected to the simple treatment of requiring dealers to go through the pretense of selling their products at stipulated levels?

Is the decline of the cast-iron soil-pipe industry to a condition where it operates at less than 15-percent capacity to be diagnosed as a case merely of "fallen prices"?

How can it be questioned that the rubber tire industry in its present stage, with its tremendous potentialities for change and development—painful though that change may be—is no fit subject for the sedative of minimum prices? It will scarcely be contended that it is a primrry object of the Recovery Act to penalize efficiency and stifle advance in the means and methods by which the products of industry find their way to the ultimate consumer.

What could have been done? Consider briefly, once more, the case of retail solid fuel: If the man who trucks coal from the mine to the bin is to be regarded as a "public enemy" we might have declared him to be such and driven him from the trade by law; if he or others misrepresent quality and give short weight, we might have provided public inspection and public scales; if racketeering, oppressive or potentially monopolistic dominance is threatened by certain units, we might have invoked the criminal law, including a possible rehabilitated anti-monopoly statute; and if circumstances establish the complete ineffectiveness of competition, we might have moved the industry into the realm of complete regulation of services and qualify on a public-utility basis. And if perchance we feel that the particular trials and tribulations which plague the industry in certain quarters are, after all, only the typical incidents of industrial change and progress, just conceivably we might have done nothing at all. Somehow, price fixing, the sole remedy which we sought so enthusiastically to administer, seems not to have been called for in the premises.

Confronted and terrified by disruptive forces beyond the control of their individual members, industries have asked that emergencies be proclaimed and prices fixed. This they have received; later the emergencies have been suspended and price restrictions removed. The disruptive forces remained. This is the very essence of futility. By dependence upon price fixing alone we have sought no result that we could define; we have achieved no result that we care to define.

But calculated futility is dangerous. Glowing expectations have been raised in the breast of every industry which has been granted the boon of emergency prices; its troubles are events of the past, only the promised land lies ahead. No one who has participated in the administration's emergency price program can be insensible to the bitterness and antagonism which attends the inevitable disillusionment. The Recovery Administration will suffer no attacks more devastating than those which it invites by the indiscriminate raising of hopes to which it can not lend substance.

Emergency activity on the part of the Recovery Administration will continue to be futile until it comes to be guided by definite purpose and to embrace lines of control more direct and more fundamental than the fixing of prices. Emergency price-fixing, unless completely recast and conceived of as one element only in a thoroughly reconstituted plan of governmental emergency action, has no place in a program of either recovery or reform.

Private Price Control and Code Policy

Statement at price hearing, January 9, 1935

(By Ruth Ayres and Enid Baird, Consumers' Advisory Board).

If price control under the codes has proven impracticable, the withdrawal of price-control provisions will not of itself restore American industry to the control of free competition. There will still remain the problem of industries that had

successfully established and maintained internal controls in the price field prior to the N. R. A. Some of these industries had devised controls that were wholly legal under court interpretations of the antitrust laws, while other industries were making use of controls either expressly prohibited or subject to court action if proven. The economic effect of these different kinds of control is often similar or identical. It is the existence of price controls exerted within an industry which is of significance; not the question of the existence of an illegal monopoly. Where it is known or seems probable that an industry presenting a code of fair competition for approval has established some degree of price control, several courses of action are open to the N. R. A.

One. It can, as in the case of the bolt, nut, and rivet industry, refuse to incorporate in codes provisions contrary to a consent decree.

Two. It can grant provisions which, taken as a whole, adequately bolster the controls already established. An example of this type of action may be seen in the Cement Code, which, while it contains no specific provision incorporating the well-established basing point system into the code, is replete with provisions which cannot but serve to implement the basing point system.

Three. It can practically ignore the significance of the existing control as in the case of the temporary Aluminum Code. The fair trade practice rules of this code include a provision quoting only one section out of many from the consent decree under which the Aluminum Co. of America, sole producer of virgin aluminum in the country, has been directed to function; furthermore, no price-filing system, the publicity from which would be a restraining influence upon the monopoly, is provided.

There are numerous types of industries in which some degree of internal control existed prior to the N. R. A. In many instances present approved codes have incorporated and consolidated previous controls. The following examples illustrate some of the problem situations with which the N. R. A. is faced.

1. One of the means of legally effecting control over prices is through centralization of patent ownership. Sometimes this device is used spontaneously; sometimes it is used as a substitute for other means held to be contrary to the antitrust laws. A case in which price stabilization was achieved through a patent licensing system is to be found in the Asphalt, shingle and roofing industry, whose leading members, when charged by the Department of Justice with price fixing agreements, sold their patent rights to a single patent holding corporation which in turn granted patent leases freely to all on condition that specific selling terms should be used.

In this instance the terms of the N. R. A. code added further control to the existing situation. Included in the price provisions is a method for the enforcement of the freight averaging methods of merchandising previously attempted. The code provides "each member of the industry shall publish his prices, terms, and conditions of sale * * * affecting each such class in the trade, for the territory to which such prices, terms and conditions of sale apply." Another clause so specifies the items to be included in a cost formula that the resultant price floor cannot fail to be high.

Here is a situation in which the present code has carried forward and strengthened under which an industry has operated to fix prices to the consumer who has had no corresponding protection.

2. Where in cases such as the following, explicit price-fixing powers are asked from N. R. A., there is some opportunity for consumers to indicate the dangers of the proposal and to call attention to past records of price agreements. At the hearings on the proposed plan for stabilization of the newsprint industry, their customers, the newspaper publishers, centered attention on the past history of the newsprint industry and on the consent decree of 1917 issued against members of the Newsprint Manufacturers Association. This decree ordered said manufacturers to refrain forever after from any attempt to maintain and raise prices by collusive agreements.

In this particular case, because of the previous record of price fixing at a high level, plus the opposition of a well-organized buyer body, the adoption under the N. R. A. of the proposed plan of cooperative price control has to date been prevented, even though this plan was meant to raise a price that at the time of its proposal was generally admitted to be relatively low.

3. When, as in the case of most industries, there is no adequate organization of the consumer group, and when price control powers are not explicitly written into codes, but exist under the shelter of, or in spite of, the codes, the responsibility for protecting the public interest necessarily falls heavily on the Government. The problem before the National Recovery Administration is especially

linked with the administrative provisions in the codes when the method of achieving control is by private concerted action.

Consider glass. The files of the Department of Justice and the files of the National Recovery Administration Deputy Administrator show that a large plate-glass manufacturing company was at one time enjoined by decree form exercising methods of intimidation to control price; they show that members of the flat glass distributing trade engaged in the allocation of sales territory as a measure of control, and that a heavy fine was imposed in this connection.

Yet the proposed Flat Glass Distributors' Code provides for close interlocking between manufacturers and distributors. It creates five regional territories for the administration of the code, despite the fact that there have already been complaints that this set-up was designed for the very allocation of sales territory that was used in the past. The code does not provide clear protection against the possible misuse of this regional set-up for price control purposes. We are not suggesting that the National Recovery Administration forbid subdivision into regional administrative areas because of the possible use of such areas to perpetuate a previous price-control system; but the record does not suggest the need of more than the usual compensating safeguards in the way of Government supervision or observation of the code if the apparently innocuous territorial divisions are to be granted.

4. The next case is one in which the price-control provisions in a series of National Recovery Administration codes has resulted in the erection of a system of price control uniting an entire industry that has long been seeking this goal.

In the paper distributing trade there has been for years a program of resale price maintenance through the circulation of a so-called "Blue Book" of suggested mark-ups for the use of paper distributors in different regions and through cooperation with the manufacturers of various paper products.

This price-control measure was so carried on by the Pacific States Paper Trade Association that investigation by the Department of Justice resulted in the issuance of a consent decree in 1923. The distributors involved agreed to desist in the future from such combinations in restraint of trade.

Under the various paper codes the National Recovery Administration has supplied the missing links to a program of price maintenance throughout this entire industry. Most important was the achievement and the maintenance of identical prices by the manufacturers of paper, through the assistance of the elaborate price-filing mechanisms in the several codes of fair competition. In the paper distributing trade the regional set-up under the open price-filing provisions, and other sections in the code, have perfected the maintenance of uniform mark-ups; further, the mandatory replacement cost and labor mark-up clauses have assured a large measure of uniformity.

There has long been great stability of prices and a substantial control by manufacturers of certain grades of paper—notably in the book paper industry—which was proceeded against by the Federal Trade Commission in 1916 for its activities in enhancing prices by methods that were in restraint of trade, but it remained for National Recovery Administration codes to complete the pattern of uniform prices, uniform discounts, and uniformly restrictive terms that face the purchaser of paper today. Uniformity of prices on Government bids during the last year and a half offers eloquent testimony on this subject.

5. In the textile bag manufacturing industry practices in regard to resale prices, terms, discounts, and freight allowances had been seriously questioned by the Federal Trade Commission. It is only fair to this industry to state that nothing illegal was found in its activity. We are not raising the question of legality, but economic policy.

This same association presented the Code of Fair Competition of the Textile Bag Industry in June 1933.

The National Recovery Administration might have chosen either one of two alternatives in its attempt to further fair competition in the textile bag industry. It might have denied price-fixing powers; it might have admitted such powers and provided safeguards to the public interest by including in the code special supervisory powers in the hands of the Administration. It did neither of these two things.

What it did was to experiment with price controls. The protests of the Consumers' Advisory Board that the mandatory use of replacement costs for raw materials would tend toward price fixing were overruled on the ground that such a use of replacement costs was a customary practice in the industry. Other price-control provisions of the code provided all the mechanisms necessary to achieve strong price control if the industry retained its previous wish to arrive at uniform

resale prices. The code as approved stipulated that nonmembers of the Textile Bag Association should be represented on the code authority. Three months later, when evidence was presented that nearly all members of the industry were now members of the association, the code was amended, so that the code authority would be composed entirely of the members of the executive committee of the association. Thus the total effect of the code was to spread an umbrella over the industry by granting legal sanction to various devices used in the past to maintain prices.

This action was not the result of a demonstration on the part of the industry that any price emergency existed, for the report of the Research and Planning Division stated that the textile-bag industry had maintained a very good position during the depression.

Through the National Recovery Administration the "competitors" of the Textile Bag Association have been drawn into its membership and there remained only the public to be protected against any price-fixing tendencies that might reappear. Should the National Recovery Administration withdraw support from provisions that permit price-fixing, affirmative protection of the public interest must still be assured.

6. In the iron and steel industry we come to a case of a different sort. The practice in this industry of quoting prices on a Pittsburgh basis led in 1924 to the famous "Pittsburgh plus" decree, which enjoined the industry from continuing this system of price control. The result of this order was the establishment of a number of other central basing points upon which iron and steel prices were quoted. Prior to the code, prices were held in close alinement because of the competitive threat of price cutting which dominant units of industry always possessed. But if it became advantageous for a producer to sell on his own terms, and if he were large enough or sure enough of his market to do so, the opportunity and the right were his to set his own price at what he believed to be profitable.

When the Code of the Iron and Steel Industry was approved it contained a mandatory basing point system in accord with which all members of the industry must quote prices. Further, the mandatory character of the present extras and deductions, which are compiled by the institute and promulgated by it in its capacity as the code authority, make any deviation from the structure of relative prices for all industry products an illegal act, and in no way subject to the judgment of the producer.

The code authority's emphasis upon an effort to control the structure of prices and to fix the limits within which all competition in the steel industry must take place is so great that it sacrifices very specific consumer interests. This is evidenced by the record in regard to the provision for the payment of all-rail freight rates. With a few specific exceptions, the code required that all-rail rates from the basing point at which prices were quoted to consuming point must be charged to each and every consumer, whether or not the goods are carried by water.

To suggestions that this provision prohibiting charges on the basis of actual water transportation costs is in principle basically unfair, the code authority has consistently replied that it will take the matter under advisement. Action does not follow, apparently because members believe that the total results of any change in this code provision would be so complicated and far-reaching upon the price structure of the industry that the code authority has been unable to devise means of allowing customers to benefit from their natural location on lanes of water transportation.

Where an organized industry has taken unto itself the prerogative of controlling the ends and means of competition, any action on the part of a Government agency, which in any way strengthens, or by implication permits, the strengthening of internal controls, carries with it special obligation to see that the public interest is at the same time protected.

7. In one or two instances the National Recovery Administration has struck at private control of prices, but by very roundabout means. One of the ills of the waste paper industry which led to the fixing of emergency prices by the National Recovery Administration, was the dominance of the purchasing paperboard ills in controlling the prices at which they would buy their raw materials. Depression of waste paper prices by manipulation was charged at the public hearings on the Waste Paper Code, and an appeal was made for some enabling provision in the code which would protect the waste paper dealers against the situation and restore a competitive market.

These charges were essentially similar to those made before the Federal Trade Commission a few years previously, when certain Middle Western paperboard mills were accused of manipulating the price of waste paper through the use of a

common agent and the boycotting of dealers who were unwilling to sell through this agent at a price established by the mills. Several mills accepted stipulation against this practice at that time, and agreed to discontinue the fixing of prices by this means.

The National Recovery Administration, when presented with the problem, indicated either unwillingness to interfere with the situation by imposing any restraints directly upon the paperboard industry. Later it attempted to write minimum price protection into the code for the waste-paper trade by an emergency order, thereby implementing the sellers with additional bargaining power. This attempt failed and the minimum-price order was canceled. The failure was partly due to buyer resistance and to the apparent power of paperboard manufacturers to retain control over the price of waste paper. The market remains as it was before the National Recovery Administration undertook to eliminate unfair competition in the industries involved.

With this type of problem before it, what action should the National Recovery Administration take? If codes of fair competition are to be approved by the National Recovery Administration, how far does it necessarily become responsible for the establishment of fair competition? Or shall it accept, as in the nature of things, the existence of controls in certain industries, and see to it that the application of these controls is so supervised that the public interest shall be protected?

We urge upon the Recovery Board full acceptance of the responsibility implicit in the philosophy of the recovery program. Merely to "reform the present codes" by ejecting their phrases about price control would not only leave well established in certain industries the actual conditions which National Recovery Administration policy holds to be contrary to the public interest, but also foster those conditions by the administrative unity maintained by the rest of the code. In order that the codes move toward fair competition rather than the establishment of permanently privileged groups in American society, they should not ignore, but regulate or prevent, the conditions which made for unfair restraint of trade.

Fixing Coal Prices

STATEMENT AT PRICE HEARING, JANUARY 9, 1935

(By W. L. Chandler, Consumers' Advisory Board)

The price-making powers granted to the Bituminous Coal Industry by the N. R. A. have produced bad results. The most important of these is that prices have risen so high that consumers cannot bear the burden and that the industry's recovery is prevented. The wholesale price of coal went above the 1929 level in March 1934 and advanced each month even during the summer period when coal prices normally decline because of the seasonal shortage of demand.

The high price contrasts painfully with low production and low employment. During the same period since March the seasonally adjusted index of production has continuously declined. In November with prices at 106 percent of the 1929 level, production was only 63 percent, employment 80 percent and pay rolls 58 percent of that level.

Minimum prices on slack coal are so far out of line with market conditions that the accumulation of slack in the hands of producers is threatening a general break-down of the price structure. With such a record it is not surprising that the industry has been filled with dissension and code evasion.

Conflict between producers in the same district or competing districts on matters of classification or price or practice have become so irreconcilable that new plans are being proposed to avert a complete break-down. Producers have refused to supply trade information to their competitors who are connected with the code administration body. Producers have grown more and more lax in supplying statistical reports to the N. R. A. Several subdivisions have already formally withdrawn from the interdistrict price-correlation procedure.

Evasions of code prices seem to be prevalent. Indeed, the ease of evasion probably has been the chief factor in permitting code prices to endure so long. The prices established by the marketing agencies do not apply to coal sold on precode contracts. Since only a very small percentage of coal is ordinarily contracted for beyond the coal year, it was assumed that the precode contracts would expire between April and July of last year and that all coal sold thereafter would be subject to the minimum prices. However, producers in some divisions have continued to report the sale of 60 percent of their total production under precode

contracts. In some cases they have reported an increase from month to month in sales under such contracts. This increase lends plausibility to the view expressed by some that the practice of executing contracts as of dates prior to the effective date of the code has become widespread.

Sales on precode contracts probably have an average range of from 15 to 40 cents per ton less than the minimum prices. Contracts now being written to cover deliveries of all sizes subsequent to June 16, 1935, are said by John L. Lewis to carry prices averaging about 30 cents per ton lower than present code prices and sales are now being made as much as one dollar below code prices.

The minimum prices have been evaded in other ways. Certain producers and their agents have written contracts containing clauses involving forfeits in the event of the delivery of coal which fails to meet guarantees as to content of ash and British thermal units known to be beyond the possibility of fulfillment. Shipments have been made in excess of the maximum tonnage specified in contracts. Coal of a high grade has been shipped at a price established for coal of a lower grade. (The latter practice, often referred to as "sweetening deliveries", is allowed in a reverse form by one division. They have ruled: "Shipment of any grade or size taking a lower price is permitted". This might appropriately be called "souring deliveries" to the determent of consumers.)

Evasions of the code have been encouraged by the fact that present code prices are apparently quite profitable. Reports from April to August 1934 showed that the reporting producers during this period approximately covered their total costs by their revenue from sales, in spite of the fact that from 17 to 63 percent of the sales were made under contracts supposedly written before the code. Since prices under precode contracts were about 45 cents a ton below code prices, it is clear that the sales at the code prices carried most of the burden. If all sales had been made at code prices the income of these producers would have averaged from 7½ to 28 cents per ton higher. Since last spring, while costs have remained about the same, prices have been rising. The inference is that present code prices are substantially above costs.

The effect of the code has been to establish a definite discrimination in prices against certain groups of customers. Those buyers who have actually paid the established price have found that their competitors or their neighbors have bought at lower prices. Other buyers are being faced by discriminations embodied in the established prices. The code prices contain arbitrary discrimination for certain kinds of coal and certain classes of buyers. For example, there was a differential set on steam coal by which Kentucky and West Virginia mines were permitted to deliver by lake to Milwaukee at 35 cents a ton less than to Chicago. It was alleged that this differential resulted from a bargain by which Indiana and Illinois operators were given preference in the Chicago market and Kentucky and West Virginia operators the preference in Milwaukee.

In some markets, consumers are discriminated against on the basis of the type of building in which the coal is burned. For example, different prices are established for contracts with hotels, apartment buildings, and off-track steam plants in the St. Louis metropolitan market.

Consumers have complained of discrimination between grades and sizes of coal. An example of this is a letter stating in part: "Mine prices fixed by the Coal Code Authority here are not in accord with the quality of the coal. The spread in price between Frederick District (third grade) and Louisville District (first grade) at the mine is around 33 percent while the spread in heat units is around 8 percent." Other protests have been received complaining that the relatively narrow margins on steam sizes were compensated for by wider margins on the prepared sizes used by domestic consumers.

There is admittedly a general disposition to combat the trend toward trucking coal as opposed to rail shipments by setting discriminatory differentials of from 10 to 75 cents per ton for less-than-carload sales. Thus far, there is insufficient evidence to indicate that the cost of loading into trucks is any greater than into railroad cars. Mines without railroad facilities, which haul their coal by truck to rail terminals, must charge the same arbitrary differential against the coal dumped into customers' trucks at the mine. This means that such customers must pay prices at the mine higher, regardless of distance, than rail customers pay for coal trucked by the producer to a railroad.

The majority, if not all, of the members of various divisional and subdivisional code authorities are representatives of rail mines. This fact multiplies the difficulty of satisfactorily adjusting the inequities such as described above.

The attractive level at which minimum prices have been established has encouraged the expansion of an already overdeveloped industry. It is reported

that in some areas, especially in the coal-bearing hills along highways, "gopher hole" mines have been opened up in almost every hollow.

In some divisions, adjustments of the mine prices of coal have been used to regulate the share of the total business going to each producer. The result of such procedure has been to limit the production of efficient operators whose ability to produce good-quality coal at low prices would have given them operation nearer their capacity, and to encourage, at their expense, the continued existence of uneconomic mines. The determination of freight allowances by the marketing agencies has created a honeycomb of prices that has fostered discrimination between one buyer and another, and uneconomic cross hauling of coal as well as its production at uneconomic points. The code itself does not provide for any consideration of production costs, economic or otherwise, in the establishment of the minimum prices.

We believe that it has been unwise to leave to private business the administration of provisions so vitally affected with a public interest.

II. RETAIL SOLID FUEL

The code originally proposed by the National Retail Coal Merchants Association provided for the fixing of prices, discounts, terms, and conditions of sale of all soild fuel sold at retail. The "superemergency" provision of the code finally adopted and approved was invented for the purpose of this code and was in its least considered form when it was hurriedly inserted to replace the price-fixing provision which was denied this trade. It is at wide variance with present N. R. A. policy.

While the code was being considered for approval the Consumers' Advisory Board advised disposal of the price provisions. At that time we stated: "There is little question that the effect of the price fixing provision, if approved, will be an advance in the present level of prices to consumers disproportionate to increases necessitated by the wage and hour provisions. * * * The major burden of higher prices will fall on a class of consumer least able to bear it. * * * Consumers will be deprived of saving resulting from the superior efficiency of individual or particular groups of retailers. * * * There may result a permanent loss of customers to the coal industry. * * * Fixed prices under this code, in our opinion, may involve the administration in difficulties and embarrassment and tend to defeat the objectives of the National Industrial Recovery Act."

Since that time the operation of the superemergency provisions of this code has created a greater volume of consumer complaints and embarrassment and administrative difficulty for the National Recovery Administration than any other code with the possible exception of lumber and cleaning and dyeing.

According to the code provision costs were to be determined on the "basis of actual cost sheets * * * and all other available data, for each kind, grade, size, and blend of solid fuel and each classification of customers." When the National Recovery Administration undertook to enforce this part of the code by a careful review of the emergency prices, the National Code Authority resigned in protest.

However, the facts which appeared during the review indicated the imperative necessity for careful supervision. In every case in which the National Recovery Administration requested supporting data and received it, the cost determination was found to be too high.

The lowest reasonable costs proposed for various regions in the industry were such as to perpetuate high-cost uneconomic retail establishment, maintain local association prices, and eliminate from many areas competition of truckers hauling direct from the mines to the consumer. Divisional code authorities promulgates as cost figures prices that were in almost every instance high enough to insure a substantial return above the costs of most of the inefficient members of the industry.

The determination of costs was made in some areas almost without evidence. In one area where cost forms were distributed to 800 dealers, 70 were returned to the divisional code authority. The chairman explained as follows: "Only 36 were of sufficient detail to be used in determining costs. Thirty-three were fairly complete and were tabulated. The other three were complete and formed the basis of our determination."

Representatives of one divisional code authority explained at a public hearing their procedure in cost determination, which was probably the procedure of a number of the others. After looking over the cost reports received from the

dealers they turned their backs upon them and "drew on their own experience and trade knowledge" as retail solid fuel dealers and agreed upon the minimum costs to be set for the various classifications of fuels and customers. In other areas where divisional code authorities felt constrained to decide approximately on the basis of the facts supplied by the cost reports, in more than one instance they eliminated certain low-cost reports and drew their conclusions from those remaining. In some cases auditing firms employed by the code authorities threw out low-cost reports. In other areas auditors revised cost reports by substituting trucking charges based upon hire of delivery trucks, in cases where dealers reported lower costs for their own trucks, by increasing the amounts for executive salaries, and by multiplying the cost for each service by the total tonnage handled by a dealer even though many of these charges did not apply to each ton of coal.

In most areas costs were not representative of the number, size, and types of dealers in the area. Blanket determinations were made covering rural and metropolitan areas. A number of areas used forms that made provision for reports of the cost of traveling, entertainment, donations, life insurance, subscriptions, association dues, bad debts, credit and collection, and interest expenses. Depreciation, miscellaneous expenses, salary expenses, and joint costs were often handled improperly. Degradation costs and service charges were rarely determined on the basis of any cost information.

Costs determined for anthracite were usually based upon the published prices of "line" companies instead of on actual invoice costs. Savings formerly available to the consumers in one area through the use of rail and water shipments were eliminated.

In areas where coal is trucked direct from mines or docks to consumers either the economies of trucking were ignored or truckers were required to add to their costs an amount equal to the freight rate.

Customers were usually classified as domestic, governmental, industrial, etc., and arbitrary cost differentials were set for the different classes. One buyer illustrated the effect of such practices by pointing out that he operated two buildings situated on the same street and separated only by an alley. The coal chute in one building is directly across the alley from the chute in the other. One building burns slightly more than 3,000 tons a year and the other slightly less. Although the actual cost in each case must be the same, the "cost as determined by the code authority was 31 cents greater per ton on the same kind and grade of coal in the case of the one building than in the other."

Divisional code authorities admitted that the usual procedure was first to determine, arbitrarily, costs for steam sizes of coal. These were set at levels low enough to avoid losing the business of large consumers. Then costs for other fuels and customers were set high enough to bring a total realization above total costs.

In none of the areas were there more than scanty estimates of tonnages classified for the various kinds, grades, sizes, and blends of solid fuel and the amount of sales by tons or dollars to the different classes of trade. Without such information it is not possible to set reasonable differentials and to estimate the income that will be realized by the cost determination.

In most areas consumers and even members of the trade strenuously opposed these cost determinations. An example of some of the milder protests is an area in which almost half the dealers signed a petition requesting the divisional code authority to cancel the prices fixed. They pointed out that they could sell coal to the public with a fair profit at prices from a dollar to $1.25 a ton below the fixed price. They said, in part: "We are paying code wages, observing code hours, and all fair practices. Since those prices have been fixed, the retail coal trade in this area has been at a practical standstill. It is decreasing employment. It is working grave injury to the National Recovery Administration by arousing unfavorable public opinion by endeavoring to force them to pay more than fair prices. It is ruining the coal industry in this area. Continuance of this policy would result in 'freezing out' the small dealers and entirely destroying competition. We do not want any price fixing on coal in this area. We urge your immediate action."

When, over the violent protests of the industry, National Recovery Administration undertook to review the cost determinations, a painful process of radjustment ensued. Areas withheld cost reports. Reports frequently did not give sufficient data to judge the accuracy of the allocation of expenses between two or more lines of business of the dealers. Some areas made determinations of "end prices" without any break-down to indicate the means of arriving at those figures. In many instances the cost reports submitted were not in sufficient

detail to permit a review for the purpose of eliminating excessive charges for legitimate items and any charges for such items as profit and interest on investment, which were excluded by the code. Prices for comparison with earlier periods were seldom furnished. One area has refused to report a breakdown of salary costs. In some areas costs which seems to be reliable range from 65 cents to $3.65 per ton, a variation which illustrates the difficulty of setting a lowest reasonable cost satisfactory to the industry and consumers. Dealers have declined in many instances to make a resurvey of their costs to supply the necessary information to enable National Recovery Administration to make a reasonably accurate review. After National Recovery Administration's review dissatisfaction with service charges, trucking charges, degradation costs, and cost differentials for customers classifications has continued. In some areas in which divisional code authorities are delaying to send the requested information which would probably result in lower costs, prices determined early last summer are still in effect. Over a million consumers at present are required to make their purchases in such areas.

Much of the problem of fair competition in this industry lies in the fact that certain dealers give short weight and substitute inferior coal for that which they purport to sell; and in the failure of certain dealers to observe code labor conditions. Vigorous enforcement of local ordinances requiring full weight and of code provisions which forbid substitution and which establish minimum labor standards would have benefited the industry. It might also have been desirable to encourage the development of better information about the industry's costs. But in the scramble for price protection certain areas made no serious effort to enforce the rest of the code. Thus they turned their backs upon their constructive opportunity. Their efforts to set high prices led in St. Louis to the appearance of a new group of truck dealers to add to the competitive struggle, in Baltimore to the installation of oil burners, and in many places to general delay by consumers in buying their winter's coal. The effect of high retail prices reinforced the effect of high mine prices in reducing production and employment at the mines.

And the experiment still continues.

(The following tables were attached: Table I.—Extent of precode contracts in effect in the bituminous coal industry, April to August, 1934; Table II.—Summary by divisions of average total cost per ton, average realization per ton, and average profit (or loss) per ton of bituminous coal, April to August 1934; Table III.—Index numbers of the wholesale prices of bituminous coal, by months, 1930 to date (1929=100); Table IV.—Index numbers of employment and pay rolls in bituminous mining, by months, 1930 to date (1929=100); Table V.—Monthly index numbers of production and stocks of the bituminous coal industry, 1932 to date.)

Price Control Through Limitation of Production in the Mackerel Fishing Code

Statement of George B. Haddock, Consumers' Advisory Board Staff, on Effect of the Attempt of the Mackerel Fishing Code to Increase Mackerel Prices by Limiting Production

Summary

1. The Atlantic Mackerel Fishing Code contains provisions designed to reduce the number of pounds of mackerel caught and sold by fishermen, for the purpose and with the hope of increasing prices on mackerel, thus increasing the earnings of fishermen.

2. Mackerel prices increased as a result of the program, but they did not increase to the same extent that volume was reduced, and the net earnings of fishermen under the limitation plan were less than before its inception.

3. When it became evident that the fishermen were not benefited by limitation of volume of production, the Administration was requested to establish minimum prices as a supplement to the production curtailment program.

4. The executive committee requested discontinuance of the production limitation program because of its failure to increase the income of fishermen and because of difficulty in securing compliance.

During the past few years, the average weekly earnings of mackerel fishermen has steadily declined, until last year the average income of fishermen was so low as to barely enable them to exist. With the purpose of and hope of increasing the

earnings of fishermen, the Atlantic Mackerel Fishing Industry Code was proposed. When approved, the code contained provisions for limiting the catch of mackerel to a point where production would balance consumer demand at a price most advantageous to the fishermen. The executive committee of the code was empowered to "estimate consumer demand," and to issue regulations to limit the catch of mackerel to that figure. It was believed that a reduction in the amount of mackerel placed on the market would result in a rise in prices sufficient to equal the cost of production.

In order that the term "cost of production" may be understood, it is necessary to realize that the cost of mackerel fishing includes the amount paid to the fishermen for their labor, cost of upkeep of boats, nets and fishing gear, and cost of supplies, fuel, and other operating expenses. Fishermen are not paid a weekly salary, but are compensated by a share in the proceeds of the catch. If a boat makes one trip or four trips a week, each fisherman will receive a certain percentage of the total earnings, after deduction of direct operating costs. So labor cost is a fixed cost, regardless of the number of trips made by the boat. Fishermen cannot be laid off during periods when the boats are idle, and then paid a fixed wage for the time the boats are in operation.

Several years ago, the United States Tariff Commission made a study of the cost of catching mackerel by purse seine boats. The conclusion was reached that in years of normal production (averaging about 41,000,000 pounds a year), the per pound cost of production was about 3 cents. The executive committee adopted this figure, and attemped to so regulate the volume of production as to keep the price per pound for mackerel close to 3 cents.

The code was approved early in May, and on May 29 tne executive committee presented to the Administration an estimate of consumer demand for mackerel, together with a set of regulations designed to restrict the catch of mackerel to that figure. During the next week, the committee revised its estimate, and on June 9 the Administrator approved Regulation No. 1, which estimated consumer demand at 700,000 pounds per week, and placed a limit upon the number of pounds which any boat could catch and sell on any single trip. No limitation was placed upon the number of trips which a boat could make during any week. The members of the industry commenced operation under this regulation the week ending June 9.

The week before the regulation went into effect, over 1,500,000 pounds of mackerel were landed, and the average price received was 1.3 cents per pound. During the first week of operation under the regulation, the volume of catch dropped to 614,000 pounds, and the price per pound rose to 2.4 cents. However, the total value of the catch, and the return to boat owners and fishermen fell sharply. The net return to boat owners and fishermen is calculated by multiplying the number of pounds of mackerel sold, by the price per pound, and deducting the direct expenses of the trip. The week prior to the production curtailment regulation, the boat owners and fishermen received over $20,000, while the week following the regulation, they received less than $15,000, despire the fact that the price increased from 1.3 cents to 2.4 cents per pound. Since the direct costs remained about the same, the net return to the fishermen was less than it had been. The next week, production declined to 420,000 pounds, and although prices increased to 4.4 cents per pound, the amount received by fishermen still remained below that received by them the week ending June 2, before the regulation went into effect.

During the first 2 weeks of the operation of the production-restriction program, the boats generally were not making more than one trip per week. During the next 2 weeks, the fishermen decided to make two or three short trips per week, instead of one long trip, thus staying within the regulation so far as pounds caught on any one trip were concerned, but bringing their total weekly landings up to a higher figure. As a result of this development, production increased rapidly during the next 2 weeks, and in the week ending June 30, production reached a level of one and a quarter million pounds. The price per pound dropped from 4.4 cents to 2.2 cents, but the total value of the catch increased to $27,682.

In order to curb this rapid increase in volume of production, the executive committee issued regulation no. 2, which was approved by the Administrator on June 28. This regulation divided the boats into two "squadrons", each of which was permitted to fish on alternate weeks, thus cutting in half the number of boats which would be fishing at any time. Since the boats were still permitted to make as many trips per week as they could, and since the supply of fish available for catching was unusually plentiful, this regulation proved ineffective, and for the next 4 weeks, the volume of production of large mackerel remained slightly in

excess of a million pounds per week, while prices stayed between 2 and 2½ cents per pound. The average weekly value of the catch was between 24 and 25 thousand dollars.

The figures used in this summary relate only to large mackerel (above 1½ pounds), because of difficulty in securing accurate detailed information on weekly production and prices of small mackerel. However, the effect of the code on production of small mackerel, and the prices received for the same, was practically the same as its effect on large mackerel, and the conclusions which may be drawn from the information relating to large mackerel apply with equal accuracy to small mackerel.

The production during the entire month of July was very close to the average production of mackerel during previous years, the regulations thus far issued having very little effect on the total number of pounds caught.

During the month of July the executive committee increased its estimate of consumer demand, and presented to the Administrator a further regulation to limit the amount of mackerel which could be landed by any boat during any week. Although this regulation was not officially approved by the Administrator until late in August, the committee put it into effect the early part of August, and it was generally observed by the fishermen.

As a result of this new regulation, the production of mackerel the week ending August 4 declined to 445,000 pounds, and the price per pound increased from 2.4 cents to 3.8 cents. During the remainder of the fishing season, production never again exceeded 500,000 pounds per week, and prices averaged above 4 cents. Yet during the remainder of the season, the weekly value of catch, and the return to boat owners and fishermen, only once exceeded $10,000. Toward the end of the season, when volume of production declined to less than 100,000 pounds, the weekly income of the fishermen dropped to less than $2,500, regardless of the fact that prices increased nearly to 5 cents per pound.

Throughout the entire season, whenever production was reduced to a point where prices rose above 3 cents per pound, the return to fishermen fell below the weekly return received before the program was commenced. Moreover, as volume of production was decreased, the per unit cost of production increased to a greater degree, so the net return was less than it would have been with a greater volume.

The effect of the production limitation program was to hurt the fishermen (because of decreased income), and to hurt the consumer (because of higher prices and a smaller available quantity of mackerel). The only ones to benefit from the code program were the mackerel themselves. This was not the intent of the proponents of the code.

The whole trouble lay in the fact that mackerel prices did not rise to the same degree or extent that production dropped. When mackerel prices went too high, buyers would buy other kinds of fish or meats, the prices of which remained practically unaffected by the mackerel code. Every time mackerel prices rose to a point high enough to offset the lower volume, consumer demand decreased to such an extent that prices had to be lowered again in order that the mackerel could be sold, thus leaving the fishermen with a smaller net return than if they had produced a greater amount at a lesser price.

Early in July the executive committee recognized the fact that the production-limitation plan was not working as had been anticipated and it petitioned the Administration to establish minimum prices below which no mackerel could be sold. The Administration recognized that it would be impossible to force consumers to buy mackerel at a higher price than they would have to pay for comparable substitute foods, and refused to fix minimum prices, pointing out that the experience of the production-limitation plan itself indicated that high prices reduced the volume of mackerel which could be sold, and that a small volume at high prices would not give the fishermen as great a net return as a larger volume at lower prices. Even if the requested minimum prices had been approved, the fishermen would have received less money per week than before the code went into effect.

The denial of minimum prices, coupled with despondency over the unsuccessful operation of the entire production limitation program resulted in the executive committee's recommendation that the plan be discontinued, and all regulations rescinded. This action was taken during the month of October. The following statement was made by the administrative representative, in his final report to the Administration:

"During the first few months of the operation of the code, the executive committee was zealous in its efforts to adjust regulations to the changing run of fish and changing market conditions. But it met with a series of delays in securing

(administrative) approval of its regulations. Approval sometimes came so late that conditions had already changed to require other revisions. By the latter part of August, members of the executive committee felt that their efforts were nullified by delays and it became impossible to get a quorum at meetings.

"At about this time the observance of regulations became increasingly lax. This was the natural sequel of days of delay in approval of committee regulations. When the old regulations were inappropriate to the changed situation, the members of the industry could not see any sense in abiding by the old regulations. When a situation arose which was not met by a regulation (I refer to destructive price cutting, for which the committee devised a lowest reasonable cost regulation, administrative approval of which pended for 3 months and was finally denied), members of the industry apparently decided that their code was not giving them the help they expected, and thenceforth disregarded the regulations."

The administrative representative presents a criticism against the delay and red tape of administrative supervision over the actions of a code authority, a complaint which may be justified. Yet it appears evident that there must be a check on the enthusiasm of individual members of an industry who have been placed in a position to put into operation their theories which they feel would cure all the evils of their industry.

Whatever the merits of the criticism of administrative delay and supervision, it is believed that the facts of the case conclusively show that the program would not have worked had the Executive Committee been given full power to act without administrative approval.

REGULATING CHANNELS OF TRADE IN THE PLUMBING FIXTURES INDUSTRY

A STATEMENT PRESENTED AT PRICE HEARING, JANUARY 9, 1935

(By Leander Lovell, Consumers' Advisory Board)

The story of the Pumbing Fixtures Code to date is the tale of the break-down of indirect price fixing. The methods employed were more circuitous than those common to ordinary price control. There were no provisions as in certain other codes, allowing the industry, with a minimum of Government supervision, to set price floors below which no member might lawfully sell. But, equally direct in aim, though less direct in method, the plumbing manufacturers embarked on an attempt at price fixing, calling it price stabilization, through restriction of the channels of distribution.

They attempted to maintain traditional forms of distribution (in this case the combination of manufacturer-wholesaler-plumber) in order to preserve resale prices and accepted price relationships. The technique of such a scheme involves the favoring, by price or other means, of chosen agents of distribution, and the use of devices to keep out new factors that might not so readily conform to fixed ideas concerning prices and distribution; and the successful operation of such a scheme would logically result in a slowing up of sound evolutionary progress in the distributive system and in the maintenance of prices at unwarranted levels because of the support of unnecessary distributive units.

The chances for some measure of success in this plan were excellent in the plumbing fixtures industry. The idea was not new.

In 1912 the Supreme Court of the United States found a combination in restraint of trade to exist among the manufacturers of cast iron enameled ware. On this occasion a pool of important patents was being used as a means for making of certain restrictive rules, including among others the prohibition of sales to jobbers except fixed prices and of resale to plumbers except at prices determined by the manufacturers. More than 85 percent of the manufacturers and 90 percent of the jobbers cooperated in the venture. In 1927 the Supreme Court declared similar activities of the manufacturers of vitreous chinaware to be in restraint of trade.

Moreover the wholesalers and plumbers, the other two groups in the marketing set-up, were of much the same mind. The plumbing contractors or master plumbers had made efforts at such restriction as early as 1886, or earlier. The advent of the mail-order house into the handling of plumbing goods had been opposed by efforts to boycott those concerns finding it desirable to sell to the mail-order houses.

What the industry wanted in its codes was first defined in the proposed code for the contracting and retail division of the plumbing and heating industry. Article VI (c) stated in part:

"* * * Provisional upon the adoption of a reciprocal system by recognized wholesalers, the contractors agree to purchase all of their plumbing and/or heating products from recognized wholesalers. * * *"

The same section also included a requirement that anyone doing both wholesaling and retailing must conduct each level of the business separately, "with an individual system of accounting in accordance with the respective codes of the wholesale and retail branches of the industry" prohibiting such a wholesaler-retailer from selling to consumers at prices "that would be lower than prices charged by retailers under the provisions of this code."

The plumbing wholesalers, in turn, included in their code as revised for public hearing on September 23, 1933, a provision (rule B–24) limiting sales of plumbing goods (other than pipe, valves, and fittings) to licensed plumbing contractors, in those States where there are laws governing the installation of plumbing fixtures, and in other States "only to business firms or corporations generally recognized as being properly qualified by knowledge and experience to install" the fixtures. Such a measure was advocated ostensibly on the grounds of health, but it is probably more than a coincidence that the measure promised to serve well as an instrument of price and distribution control. A further provision in the same code made it an unfair method of competition for any wholesaler to quote or sell at lower than manufacturer's published resale prices.

Although these provisions were not approved, other provisions in the approved Wholesale Plumbing and Heating Code go a long distance in the same direction. These other less direct means of restricting distribution include definitions of wholesalers, wholesaler-retailers, plumbing contractors, and of "institutional, commercial, and/or industrial users of plumbing products." The last-named are defined as governmental agencies and commercial buyers who purchase on a wholesale quantity basis and who employ "regularly on full time, a properly qualified master plumber." Any member engaged in business on more than one level is required to segregate his levels of business.

The manufacturers of plumbing fixtures were peculiarly successful in their attempts to obtain similar code provisions. Section 7 of article VIII contains a most restrictive definition of a wholesaler, making it practically a requisite for such an individual to become a member of the Wholesale Plumbing Code in order to receive the manufacturers' wholesale prices. In order to tighten the traces, however, this section continues by prohibiting manufacturers' sales to consumers and by requiring manufacturers in their turn to segregate levels of business. Further to insure the operation of the scheme, the code authority is given power to establish, subject to administrative approval, a differential between levels of prices given to the wholesalers and to retailers and to require at any time the filing by each manufacturer of the names of his customers, his schedule of discounts, and other such information.

This section also limits quantity discounts to 5 percent. And, as if taking the words directly from the mouths of the wholesalers, manufacturers are told to publish and distribute suggested prices for consumers. Other sections of the same article provide for open price filing and the filing of copies of invoices, credit memoranda, and sales documents as required by the code authority.

This is what it all means: A manufacturer must file his prices, customer lists, and discount schedules. If he operates wholesale branches, these must sell to the plumber at the required level, and neither he nor his branches may sell to consumers. The wholesaler in turn will sell only at the prices suggested by the manufacturer and only to contractors and others who employ contractors. The plumber will receive suggestions about prices for his sales to ultimate consumers.

True, no section of the code dictates to the manufacturer the exact price at which he must sell. There are, however, in addition to the above provisions in the Plumbing Fixtures Code, several others. One of these provides for standardization of the industry's products by the code authority and requires the manufacturer to make proper charges for deviation from such standards. Another provision gives the code authority, with administrative approval, the right to grade the industry's products, and prohibits the sales of second-grade ware. A third provision prohibits sales to anyone handling used plumbing or heating supplies. A fourth section provides for the establishing of a mandatory uniform cost system.

To the extent that these provisions might have operated to realize the hopes of their sponsors, the objections of the Consumers' Advisory Board are well known and clear. Price fixing by indirection is still price fixing. To the extent that such provisions are doomed to fail, to that extent do they cast discredit

on the entire Recovery Administration and impair the valid portions of the recovery plan. Now, what in fact have been the results?

Both Bureau of Labor Statistics prices and complaint letters attest that prices of plumbing fixtures increased sharply in the latter part of 1933. These price increases were uniform and were regarded as distinctly unreasonable by wholesalers as well as by others. Certain of the increases amounted to more than 100 percent. Coming at the very period of code making, they gave advance notice of what was anticipated under the operation of the Code for the Plumbing Fixtures Industry.

Prices of plumbing goods, as reported by B. L. S., reached a plateau about September 1933. This they maintained through April 1934. Then the decline. Since the middle of 1934, the deputy's files have served as a spectacular, but accurate barometer of the state of the plumbing fixtures industry. What began with a few complaints on code authority discrimination turned, in September 1934, into a landslide of complaints against the code and its enforcement.

The prices of plumbing goods have been falling since April 1934 have reached new depression lows, and the end is not yet.

What wrecked such a grandly conceived structure?

A. To begin with, the mail-order houses did not fit readily into the system. Their prices did not rise sharply in 1933. They felt no necessity for separating their levels of business, sold in great quantities to the ultimate consumer, and held outstanding contracts binding certain medium-sized manufacturers to afford them prices considerably more favorable than those granted to so-called "legitimate" wholesalers. The mail-order houses did not believe in open-price filing or in the restriction of trade discounts; they reacted to the code by prohibiting the disclosure (as required in art. VIII, sec. 2) of their contracts with certain code members. And, above all, they proceeded to lower their prices.

A member of the code authority resigned from that body after becoming thoroughly convinced that the code could not be enforced, as he put it, "largely because of the combined defiance of several of its provisions both on the part of the mail-order houses and the manufacturers supplying same." The refusal to allow the filing of contracts, which is the nature of the "defiance" referred to, is being tested in a case which has rested in a Milwaukee court several months.

B. In order to retain its proportion of the business, the largest manufacturer in the plumbing fixtures industry, with between 60 and 100 branch houses, started out to meet the competition of the mail-order houses and even to beat the latter at their own game. To add to the difficulty, the industry's open-price filing plan (designed to stabilize the distributive system) proved shortly to be "too open." Small manufacturers hitherto selling their nonbranded wares, by offering slight price concessions soon found their market taken by their large nationally known competitors, at last in full possession of price information. The resulting strain upon the relations between small and large members of the industry is amply attested by the flow of complaints to the Administration.

In other words, what was to have been a united front of all manufacturers with a perfectly mathematical relation to whosesaler and plumber, has developed into a very serious struggle over prices among the manufacturers themselves. And in the conflict, the industry has reached a new low, not only in prices, but in morale.

C. The prohibition of the sale of second-grade ware, under article VIII, section 3 and 4 of the Plumbing Fixtures Code, is a part, too, of this story. Seconds, it should be borne in mind, are serviceable, having a definite and ready market, and their production is almost inevitable, to a greater or less extent, in the manufacture of clay products.

Vitreous-china seconds compete in price, however, with cast-iron enamelware and are, to many, more acceptable than the latter. But more important is the relation between sales of seconds and sales to dealers who handle used plumbing goods, which is also the subject of code prohibition. Both prohibitions are necessary to a complete control of the distributive channels. One price and one kind of dealer are all that can be tolerated in the channel from manufacturer to wholesaler to plumber. Already, one manufacturer, as if to test the force of the code provision, has nearly wrecked the market in the Middle West by his sales of seconds. Experience to date foreshadows the complete breakdown of this whole group of restrictive provisions designed to influence the market and price of industry products.

D. The code prohibition of sales to consumers, of consignment sales, of quantity discounts over 5 percent, are of the same stripe—designed to beat into a dead level of uniformity any tendencies toward marketing vision and initiative—and

about these, too, the files of the deputy are replete with letters of dissatisfaction and complaint.

This story points its own moral. The plumbing fixtures industry would be well rid of the restrictive devices by which it has sought to consolidate its past position at the cost of denying to itself all chance of growth and development. And the Recovery Administration would be well rid of all responsibility for the continuance of the condition.

THE EFFECT OF PRICE CONTROL AND PRICE STABILIZATION ON THE CONSTRUCTION INDUSTRY

STATEMENT AT PRICE HEARING ON JANUARY 9, 1935

(By J. M. Hadley, Consumers' Advisory Board)

Inactivity in building now hampers economic recovery. Price control and price stabilization devices in the building material manufacturing codes and the chapters of the Construction Code have adversely affected building volume, as will be shown in the following statement:

Fundamentally, construction by private capital is undertaken only when there are fair prospects of profitable rental or sale in the current market. The profit motive must be present or the builder will not put capital into building operations. Similarly, banks and building-loan associations must be governed by the profit prospects, for even though the funds be available, and even though the Government will guarantee 20 percent of the mortgage, the lending agency cannot assume the risk if building costs are incompatible with the market.

The maximum decline in the building materials index was 29 percent from its 1926 level, whereas the all commodity index lost 36 percent; yet building materials have regained twice as much of their loss as have all commodities. Building material prices are only 9 percent below 1929 (Bureau of Labor Statistics) and the composite construction cost index for October 1934 (as compiled by the Engineering News Record) is only 1½ percent below the 1929 monthly average. The Associated General Contractors' index of building costs likewise illustrates the point; in October 1934, the latest month of record, it stood only 10.8 percent below 1929. Buyers know that they cannot build at these prices and in many cases they suspect that as in the lumber industry the topheavy price structure will topple of its own weight and the artificial props will be removed by N. R. A.

During the life of the N. R. A. construction costs have increased faster and further than other costs. At the same time construction awards are only 20 percent of the weekly average for 1923–25, whereas the composite index of general business activity (Dec. 27, 1934 issue of the Survey of Current Business) has risen to 82.1 percent of the weekly average of 1923–25.

No one is going to put money in a new home or factory building if it is sure to be worth less than the cost of construction, or if he can buy the neighboring property for much less than the new one would cost him. For a time foreclosure made purchase of existing buildings attractive. But the credit emergency is no longer acute. The Government has supplied the machinery by which credit is generally available for those who would borrow and at the same time has removed the pressure of liquidation from the real-estate market.

The present difficulty is that rents and building costs are out of line. At the beginning of 1933 rents were 27.8 percent lower than in 1929, according to the National Industrial Conference Board. The downward movement continued through July. In August, rents remained stationary. A slight upturn in September was followed by further, although modest, declines until January 1934, when the new low point since 1929 was reached. From January to July 1934, there was a small increase of 3 percent but rents are still approximately 30 percent below 1929 levels. With rents still low, and the market unstable, builders are likely to wait for prices to swing into line.

In spite of this situation, an effort has been made to raise construction costs. The following chapters of the Construction Code prohibit submitting a bid that is below cost, and prescribe formula by which cost is to be determined; a copy of the bid must be sent to a bid depositary which, after the bids have been opened, sends a tabulation of all bids to each bidder. Painting, paperhanging, and decorating industry; tile contracting industry; cement gun contractors industry; electrical contracting industry; roofing and sheet metal contracting industry; plumbing contracting industry; resilient flooring contracting industry; wood floor

contracting industry; insulation contractors industry; kalamein industry; heating, piping, and air-conditioning contracting industry.

To separate the influence of building material prices from that of construction code cost formula is practically impossible. Their combined effect, however, has been staggering to the construction industry. The industry is beginning to realize what is happening. In this connection, the following is quoted from a report of the Georgia branch, Associated General Contractors:

"Tendency on part of subcontractor to use code as means of fixing prices, thus creating rackets. It is a known fact that in certain trades, subcontractors are using their associations as a means of fixing high prices and in allocating work.

"Tendency on part of public to place work in the hands of irresponsible people to avoid high costs entailed by adherence to code requirements.

"There are any number of specific instances where work has been awarded by owners to ex-superintendents, foremen, labor foremen, etc., who do not carry insurance, who secure materials through purchases direct by the owner, who have no credit standing, in the endeavor of the owners to secure work done at a less cost than would be permissible under code requirements.

"The codes are so involved and complicated that the general contractor assumes responsibilities that are not defined.

"There has been no set-up or means by which the individual contractor may be informed of the interpretations which are placed on the various codes in the construction industry. Some means should be established at once where all the official interpretations may be broadcast to every one in the building business.

"The codes fail to measure the economic value of completed structures, thereby stopping private investment in construction projects.

"It is generally recognized that the bulding costs are so high that under the present investment structure, it is impossible to make a return on the investment, thereby obviating a desire on the part of capital to invest in building construction. The tendency should be to reduce costs in order to enable capital to seek investment in the construction field."

Similar reports come from other parts of the country; one of the most recent was from the Metropolitan Builders Association of New York.

VOLUME OF CONSTRUCTION AWARDS

With the above considerations in mind, let us examine the course of construction awards (chart 3). The downward sweep of all classes of construction volume was reversed in 1933 when public works (chart 4), increased steadily from 20 million dollars in July to 148 million dollars in December. With the decline in public awards we are down to 7 percent below where we started a year ago. Residential construction is also below, registering consecutive losses for the past 7 months, with the exception of October.

There is need for 600,000 to 1,000,000 new houses at the present time. In addition, there are vast needs for modernization and repair.

The pressure here has been so great that 20 percent of our present construction volume is for modernization work, but this is almost entirely on income property where the work had to be done regardless of cost.

SUMMARY OF FACTS AND THE ISSUE FACED

We must face four major facts:

1. The credit situation has been measurably relieved and credit is generally available for those who are willing to borrow.
2. Public awards represent almost the entire improvements effected in the construction industry.
3. Construction costs are out of harmony with rentals and real-estate valuation.
4. There is vast need for repairs, improvements and new construction. Twenty percent of present construction volume is for modernization, largely in income property where not to modernize or repair might result in loss of income.

Although credit is available, and public works have been tried as a means of "priming the pump", 2,000,000 workers are still without employment in a stagnant construction industry. The public's need for housing is not being met. Favorably located and efficiently operated enterprises are being handicapped by code provisions designed to protect the less efficient parts of their industries.

Only one thing will bring about increased construction volume by private capital, and that is a normal relationship between construction costs and income from rents or real estate values. Either we must wait for all other industries to recover

to the extent that rents and valuations will rise and make building possible, or we must allow building costs to seek their natural levels.

To do this, two important steps must be taken:

1. The artificial price control features of the building material codes must be removed.

2. The mandatory cost formula in the chapters of the Construction Code must be removed.

(Charts attached.)

PRICE FIXING IN THE LUMBER INDUSTRY

STATEMENT AT PRICE HEARING, JANUARY 9, 1935

(By Constant Southworth, Consumers' Advisory Board)

The lumber industry has engaged in one of the most far-reaching experiments in price fixing under the recovery program. Almost all elements in this basic natural-resources industry joined in establishing mandatory minimum prices. A year and a half later representatives of a large part of the industry came to Washington to demand that minimum prices be abandoned. The N. R. A. acceded to the demand.

The minimum prices on lumber were based on weighted average costs. The date from which these costs were computed were necessarily fragmentary. Few lumber manufacturing concerns were able or willing to present reasonably complete figures on even their current operating costs. Practically no lumber companies furnished reliable data on such items as depreciation and cost of carrying standing timber. Adequate data on existing lumber stocks, needed for allocation of overhead cost, also were lacking. The inevitable result was that the minimum prices represented little more than guesses. Some idea of the difficulty of computing accurate figures may be gained from the observation of a lumberman at the recent lumber price hearing to the effect that the lumber price list covered 5,000 different items, for each one of which, through the system of discount differentials, there were six different prices, resulting in a total of 30,000 separate and distinct prices.

In July 1934 the technical basis of these prices was changed from weighted average to "reasonable" cost and in order to aid the Government housing program the prices on housing items were reduced an average of 10 percent. The change in cost basis was made possible through the declaration by the N. R. A. of an emergency in the lumber industry, but the price reduction was arbitrary and had no relation to costs. The Research and Planning Division of the National Recovery Administration in the meantime had accumulated additional data on lumber production costs, but even now the computation of minimum weighted average or "reasonable" prices on lumber could only be guesswork.

The adoption of minimum prices on lumber evidently did not do the public or the lumber industry any good. Lumber prices rose too high for the public to buy. The chart presented herewith shows the percentage relation of lumber prices to the prices of all commodities and to the prices of building materials (including lumber) by annual averages for the years 1918 to 1934 and by monthly averages during 1933 and 1934. Lumber prices in the first 10 months of 1934 averaged 53 percent higher relative to general wholesale prices, than before 1914, not because of, but in spite of, the underlying demand and supply factors in the industry. How long can the price of any commodity stand the strain of such a distortion of its logical relationship to the general price level—particularly a commodity as vulnerable to market influences as is lumber? If the industry wants to attain a volume of product approaching the 1910–14 level, it presumably must bring its prices back to something like their 1910–14 relationship with other prices.

The percentage relation of lumber prices to prices of all commodities, which had slumped considerably during the war, rose rapidly in 1919 and 1920, reaching an average of 143 for the latter year. After a decrease to 122 in 1921 it rose again to the high average of 149 in 1923. It decreased to 136 in 1924 and remained fairly steady at an average of slightly over 130 from 1925 to 1930. Then it decreased to 121 in 1932. Stimulated by the events just preceding and during the operation of the code it rapidly increased again and in the first 10 months of 1934 averaged 153. The price of lumber as a percentage of the price of building materials likewise increased rapidly during the war. In 1920 it amounted to 119, but after that it decreased. From 1924 to 1929 it was fairly steady at an average

of about 106, after which it dropped rather rapidly. In 1923 it was only 88, but recovered to 106 in the first 10 months of 1934.

The rise from May to December 1933 was much faster for lumber prices than for wholesale prices in general or for wholesale prices of building materials. Since December 1933 the price of lumber has decreased relative both to prices in general and to the price of building materials, but in October 1934 it still stood much higher relative to these more general prices than it did in the early part of 1933. Relative to prices in general and to prices of building materials it was 14 and 18 percent, respectively, higher in October 1934 then it averaged in the first 4 months of 1933.

Recent figures for lumber consumption compiled by the Timber Conservation Board have not been encouraging. The lowest consumption in any 6 months' period in the twentieth century was 6,300 million board-feet in the second half of 1932. The two halves of 1933 showed successive increases. Consumption in the second half of that year reached 8,200 millions. However, the two halves of 1934 (fourth quarter estimated in advance) show successive decreases. The figure estimated for the second half of that year is 7,500 millions. Thus the slight gain in consumption achieved at first under the code appears to be waning.

Stocks have piled up in amounts which, considering the limitation and control of production that was set up by the code, seem excessive. Just prior to the adoption of the code they underwent a considerable decrease but in recent months they have been almost as large as they were in January 1933, having increased steadily between July 1933 and July 1934. The October 1934 figure was about the same as the July 1934 figure. The Timber Conservation Board stated that stocks in July 1934 were nearly twice as large as they ought to have been for a healthy relation between new production and inventory. It still states that stocks are much in excess of what they ought to be.

Also it should be noted that since the code went into effect in August 1933, more than 5,000 additional sawmill units have been placed in operation.

In view of the many complaints from consumers that lumber prices under the code have been too high to permit building or renovating, we believe there is a direct connection between fixed prices on the one hand and low consumption and piling up of stocks on the other. Similarly the maintenance of abnormally high prices can be held accountable for the sudden and sharp increase in the sawmill birthrate—an increase which in view of the excess capacity of the industry makes for waste and inefficient utilization of existing equipment.

Neither the consumer nor the producer of lumber has endured fixed prices philosophically. At the first the consumer made the most noise. The following is an example of hundreds of consumer letters received by the National Recovery Administration.

"I have plans ready for construction of home for myself; however, investigation reveals that prices of building materials and lumber are entirely out of line with other prices, also income, I am only one of many in this section of the country planning to build, but I positively will not do so with lumber prices so badly out of line with other prices. New home construction has lagged far behind other industries in our President's recovery program. I will start my new home just as soon as this 'high-jacking' of prices of building materials has been corrected and not until then. I feel sure I am expressing the feeling and convictions of thousands of others 'would like to be home owners'."

The principal consumer protest against high lumber prices and price fixing has come from the furniture industry, whose code authority in September 1934 stated at a National Recovery Administration hearing that code prices on hardwoods used in furniture manufacture were too high, and that the majority of manufacturers of these types of lumber had consistently sold them during the operation of the code to the furniture industry at less than code prices.

Recently concerted protests by lumber manufacturers against the continuance of minimum prices began to be registered. Disregard of code prices had long been widespread—in hardwoods, for instance, as stated by the Furniture Code Authority—but the price violators simply violated and did not mention the fact. But when it became evident even to the casual observer that code prices were breaking down, such lumber manufacturers as had been making a genuine effort to conform with the code were placed in an intolerable situation.

In certain regions, particularly the West coast, it was becoming difficult for mills observing code prices to continue selling lumber. In a poll of all lumber manufacturers in the Northwest undertaken in August by Crow's Pacific Coast Lumber Digest, 81 percent of the fir manufacturers and 69 percent of the pine manufacturers admitted that they were selling at less than code prices. In September the hardwood industry nearly kicked over the traces when they

learned that over 60 of their members had sold the Fisher Lumber Corporation (body builders) 40 million feet of lumber below code prices and that they had apparently made a fair profit out of the order. A compromise reduction of the scheduled prices for the whole hardwood industry tided over the crisis for the moment.

The climax was reached on October 30 when the West Coast Lumbermen's Association voted formally for discontinuance of minimum prices. A lumber price hearing before the National Recover Administration followed on December 11–13 and on December 22 the National Recovery Administration suspended minimum prices on lumber for an indefinite period.

The testimony shows that cost protection broke down first in the lowest-cost region—the Northwest—next in the South, and last in the North Central and Northeastern region. By the time of the lumber price hearing last December observance of code prices had almost disappeared in the West Coast Logging and Lumber Division, while practically 100-percent compliance was stated to exist in the Northern Hemlock Division and the Northern Hardwood Subdivision. This order of disintegration seems significant. It seems to indicate that the part of the industry with the highest costs profited from fixed prices the most and the part with the lowest cost the least.

The statements made at the hearing were all in the record and do not need repetition here. It will be helpful, however, to summarize certain facts brought out by practlal lumbermen at that hearing as to the manner in which minimum prices had operated in the lumber industry and why they broke down.

In the first place, the general average of the cost-protection prices was stated to be too high to move lumber in adequate quantities on account of the fact that the original cost formula included certain items which did not belong there, such as cost of owned stumpage, full depreciation, interest, losses on trade accounts, and full selling costs. The first two of these items were soon suspended in determining minimum prices, but the others remained.

Secondly, the testimony showed that it was not humanly possible to figure out 30,000 separate prices—3,000 items with 6 prices for each—and preserve anything like a logical or equitable interrelationship, among regions, among species, and among types and amounts of service rendered by different distributing channels. The working out of the relative figures became a process of political bargaining among divisions and associations.

But even if the average height of prices had been reasonable and if the fundamental relationships just discussed had been accurately reflected, the price schedule would still have failed to fit itself in a realistic fashion to the producing and selling conditions. It would still have constituted an arbitrary and rigid mold, because although already elaborate and intricate it failed to take account of the following very real factors of variation in cost.

Variations in product cost between individual producers of the same items.

Varying degrees of quality of the wood and of refinement and accuracy of manufacture in a single item covered by the price schedule.

Varying degress of seasoning.

Varying degrees of marketability of product as between producers owing to intangible factors like goodwill, reputation, selling facilities, size of establishment, etc. For instance in certain regions the products of small mills tend to enjoy less marketability, grade for grade, than do the products of large mills.

Varying costs as between export and domestic sales.

Varying cost of distribution for different sizes of order.

Varying amounts of service performed by distributors in the same customer-differential group.

Moreover, any schedule of fixed prices covering as large a number of items as did the lumber schedule is likely to be shown to respond to variations in cost over a period of time. Thus it is not surprising that the following, in addition to outright ignoring of code prices, were some of the obstacles to the success of price fixing.

(1) It was not feasible to bring nonmanufacturing wholesalers under the code because of the difficulty of ironing out certain practical and legal questions as to what differentials should be allowed what types of customer. This meant an impossible situation as regards price enforcement.

(2) Retailers' sales in carload lots, which were originally under the jurisdiction of the retail lumber code with its fixed moral mark-up, were removed by the National Recovery Administration from the code's jurisdiction fairly early in the history of the Retail Lumber Code and were not placed under the lumber and timber products code, with the result that another important part of lumber sales remained outside cost protection.

(3) The wholesale discount was extended by lumber manufacturers to various customers for whom it was not intended by the framers of the code. Important among these customers were the Government (partly as a result of Administrative Order X-48, railroads, and large retailers. A. F. Titus of the Intercoastal Lumber Distributors Association stated that "there are occasional high-minded retailers who refuse to accept orders of lumber at less than the manufacturer's prices. I am inclined to believe that these high-minded individuals are very few and represent an insignificant minority."

(4) There was a considerable amount of "sweetening" of grades, or shipping a higher grade of lumber than the invoice called for.

(5) Secret rebates in the form of presents were given.

(6) Rebates were disguised by lowering transportation charges, particularly ocean freight, and trucking charges.

Under such conditions of "chiseling" and of incomplete code jurisdiction, and also of lack of correlation of prices with costs, as described above, it is not surprising that there was trouble and dissatisfaction everywhere. Jealousy existed between different regions and different species. There was a feeling that small-mill differentials were inequitable and that certain types of mill cutting a low grade of lumber were discriminated against. There was dissatisfaction with the failure of export prices to be linked up properly with domestic prices. Frozen stocks tended to develop in certain items of lumber and shortages in others—that is, fixed prices tended to retard the manufacture of certain sizes, with consequent delay and extra cost to the buyer in getting them. Stocks showed a tendency to pile up in the hands of the manufacturer where previously the distributor had borne much of the burden of carrying them. Some manufacturers stated that since the adoption of fixed prices it had become harder for them to negotiate bank loans.

A lumberman present at the hearing stated that "price-fixing, without exaggeration, has meant a serious moral degeneration in respect of normal business standards and ethics." Let us hope that this moral degeneration, like the price fixing which brought it about, has also been taken out of the lumber industry.

APPENDIX A. MATERIALS USED IN THE OPEN PRICE STUDY

The purchasing agents to whom the inquiry was addressed included all those who buy for the Federal Government in Washington, D. C., and a selected list of 308 who buy for cities, States, and large industrial concerns. Replies were received from the Federal purchasing agents but from only 29 others. A few of the Federal purchasing agents were unable to supply information, either because they had bought little recently or because their files are not kept in a form which permits answer to our questions without excessive labor. Many of them, however, supplied considerable amounts of information.

A selected list of 959 concerns were asked, in their capacity as buyers, to supply information about the price systems of those from whom they buy. Only 93 replies were received, and most of them gave little information. Comments which came to us indicated that some enterprises regard any adverse statement to the Government about prices and trade practices as unsportsmanlike; and that others, themselves possessing code privileges they do not want to lose, are unwilling to strengthen the argument against these practices by any adverse report about their use by sources supplying materials.

The largest part of the study is based upon information from code authorities and members of industries operating under open price codes. Between February 17 and February 25 (except in a few cases in which addresses were not available until later) letters were addressed to code authorities of 118 industries whose codes contain some form of open price provisions and were approved before January 31, 1934.

(a) The Post Code Analysis Unit of the Division of Economic Research and Planning under date of February 24 listed 120 of the 241 codes approved before January 31, as industries for which the basic code or one or more supplements contained an open-price clause. A check of this list led to the removal of Code No. 201, Wholesaling or Distributing Trade, which contains no open-price provision, and the addition of Code No. 174, Rubber Tire Manufacturing. Code 200, Sanitary Napkin and Cleansing Tissue, was omitted by error from the original list and passed in the check; it was not included in this study. In addition Code 43, Ice, was excluded because minimum price schedules are permitted, and Code 54, Amendment 1, Throwing Industry, was excluded.

The code authorities of these 118 industries received two form letters, attached below. Form 1 requested a membership list for the industry and form 4, signed

by General Johnson, asked for certain information about the operation of the open-price plan in the industry.

On April 15, 79 of these 118 industries had sent membership lists. Four of these lists had been sent so late that no letters have yet been addressed to the individual members of the industry.

Representative members of the other 75 industries have received copies of form 2 (attached below) asking for information about their experience with open-price provisions in the respective codes under which they operate. An effort was made to include in the sample from each industry some of the largest concerns, some of the smallest, some from each important geographical or industrial division, some who are not members of the trade association, and all who protested against the code at public hearings.

Returns from these inquiries varied greatly in number from industry to industry in both number and completeness. The following list shows for the 58 industries whose results have been tabulated, the number of letters sent to members of each industry and the number of replies received by April 10, when the tabulation sheets were closed.

Code no.	Industry	Letters mailed to members	Number of replies
4	Electrical	121	42
6	Lace manufacturing	20	2
11	Iron and steel	135	18
25	Oil burner	75	9
26	Gasoline-pump manufacturing	40	14
31	Lime industry	130	31
33	Retail lumber, lumber products, etc	104	18
34	Laundry and dry-cleaning machine manufacturing	50	5
39	Farm equipment	44	7
55	Compressed air	33	7
56	Heat exchange	77	11
57	Pump manufacturing	55	19
58	Cap and closure	31	8
59	Marking devices	99	11
62	Steel tubular and fire-box boiler	43	7
63	Plumbago crucible	10	5
66	Motor bus	148	5
67	Fertilizer	262	74
73	Hair and jute felt	18	2
77	Crown manufacturing	20	4
80	Asbestos	45	4
81	Copper and brass mill products	32	10
82	Steel casting	42	7
88	Business furniture, etc	52	12
90	Funeral supply	42	12
92	Floor and wall clay tile manufacturing	12	4
96	Buff and polishing wheel	40	13
98	Fire extinguishing appliance manufacturing	49	10
99	Asphalt shingle and roofing	32	12
102	Shovel, dragline, and crane	20	6
103	Machine tool and forging machinery	50	5
107	Ladder manufacturing	28	8
108	Motor fire apparatus manufacturing	40	10
109	Crushed stone, sand and gravel, and slag	230	58
113	Limestone	38	2
114	Scientific apparatus	70	18
117	Gear manufacturing	23	11
123	Structural clay products	230	53
128	Cement	59	31
129	Radio broadcasting	10	2
131	Pipe nipple manufacturing	36	3
136	Vitrified clay sewer-pipe manufacturing	57	6
137	Warm-air furnace manufacturing	52	17
149	Machined waste manufacturing	21	7
150	Asphalt and mastic tile	11	4
153	Valve and fittings manufacturing	51	16
156	Rubber manufacturing	209	46
168	Refractories	24	1
170	Grinding wheel	44	12
171	Rolling steel door	99	5
174	Rubber-tire manufacturing	27	15
176	Paper distributing trade	100	26
183	Household ice refrigerator	33	9
186	End grain, strip wood block	10	4
187	Cotton-cloth glove manufacturing	20	4
190	Paper stationery and tablet manufacturing	40	4
205	Metal window	26	6
236	Cooking and heating appliance manufacturing	25	9

The 39 code authorities listed below sent no membership lists in response to our request. Hence, letters have not been sent to members of these industries. This inquiry developed no information about them except in occasional letters received from companies which operate under two or more codes and received an inquiry about some other code.

Industry:	Code
Cast iron soil pipe	18
Builders' supplies trade	37
Industrial supplies and distributors' trade	61
Road machinery manufacturing	68
Rock crusher manufacturing	76
All-metal insect screen	112
Wood plug	115
Mopstick	116
Chinaware and porcelain manufacturing	126
Reinforcing materials fabricating	127
Precious jewelry producing	130
Excelsior and excelsior products	146
Motor-vehicle storage and parking trade	147
Pyrotechnic manufacturing	148
Metal tank	154
Stone-finishing machinery and equipment	158
Dry and polishing mop manufacturing	159
Rayon and silk dyeing and printing	172
Smelting brass and bronze, etc	173
Medium and low-priced jewelry manufacturing	175
American match	195
Cork	199
Carpet and rug manufacturing	202
Plumbing fixtures	204
Feldspar	206
Picture molding and picture frame	208
Drapery and upholstery trimming	212
American glassware	215
Dental laboratory	217
Envelop	220
Card clothing	222
Furniture and floor wax and polish	224
Light sewing, except garments	226
Venetian blind	229
Paper-bag manufacturing	230
Merchandise warehousing trade	232
Alloy casting	237
Advertising display installation trade	240
Chewing gum	241

Certain code authorities have also failed to answer form 4, an inquiry about open prices addressed directly to the code authorities, and signed by General Johnson. The 13 listed below, which failed to send membership lists, have as yet made no response to any part of the inquiry.

Industry:	Code
All-metal insect screen industry	112
Wood-plug industry	115
Mopstick industry	116
Stone finishing machinery and equipment industry	158
Rayon and silk dyeing and printing industry	172
Smelting brass and bronze industry	173
Carpet and rug manufacturing industry	202
Picture molding and picture frame industry	208
American glassware industry	215
Dental laboratory industry	217
Light sewing industry except garments	226
Venetian blind industry	229
Paper bag manufacturing industry	230

In addition, the 14 code authorities in the following list had not answered the questions in form 4 at the time the tabulation was closed.

Industry:	Code
Iron and steel industry	11
Cast-iron soil pipe industry	18
Textile bag industry	27
Road machinery manufacturing industry	68
Hair and jute felt industry	73
Canning and packaging machinery industry	75
Rock crusher manufacturing industry	76
Crown manufacturing industry	77
Shovel, drag line, and crane industry	102
Reinforcing materials fabricating industry	127
Vitrified-clay sewer pipe manufacturing industry	136
Dry and polishing mop manufacturing industry	159
Rolling steel door industry	171
Rubber tire manufacturing industry	174

The four code authorities in the following list acknowledged the receipt of form 4, said that they would make their price lists available, but did not either answer the questionnaire or supply price information.

Industry:	Code
Paper and pulp industry	120
Chinaware and porcelain manufacturing industry	126
Cotton-cloth glove manufacturing industry	187
Merchandising warehousing trade	232

Other code authorities replied with the statement either that the open-price plan had not yet been put into effect or that it had been operative for such a short time that there was too little experience upon which they could base their replies. They are as follows:

Industry:	Code
Lace manufacturing industry (open-price plan not been put into effect)	6
Marking devices industry (open-price plan not been put into effect)	59
Structural clay products industry (no experience)	123
Pyrotechnic manufacturing industry (code authority has not called for filing of prices)	148
Set-up paper box manufacturing industry (code authority has not called for filing of prices)	167
Paper distributing trade (open-price plan not yet organized)	176
Commercial refrigerator industry (code authority has not distributed price data)	181
Paper stationery and tablet manufacturing industry (not yet organized)	190
Folding paper box industry (little experience)	193
American match industry (not organized)	195
Cork industry (not operating plan pending approval of merchandise plans)	199
Plumbing fixtures industry (little experience)	204
Feldspar industry (little experience)	206
Envelop industry (not yet called for, prices to be filed)	220
Construction machinery distributing trade (very little experience)	223
Furniture and floor wax and polish industry (provision stayed)	224
Alloy casting industry (not yet operating under open-price plan)	237
Advertising display installation trade (no experience)	240
Chewing gum trade (little experience)	241

Still other codes, nominally listed as open-price codes, do not possess the characteristics usually thought of in discussion of open-price systems. This list includes the following:

Industry:	Code
Underwear and allied products manufacturing industry (confidential filing)	23
Retail lumber and lumber products manufacturing industry (minimum prices based on model cost)	33

Industry—Continued.

	Code
Builders' supplies trade industry (minimum prices based on model cost)	37
Motor bus industry (tariffs filed but can be changed without notice)	66
Radio broadcasting industry (operated on Federal license; code authority publishes rate cards)	129
Motor vehicle storage and parking trade (code requires posting on premises)	147
Drapery and upholstery trimming industry (code authority can collect price data as part of statistics but has not done so)	212
Cooking and heating appliance manufacturing industry (confidential filing)	236

The foregoing lists cover nearly half the open-price codes. Upon these codes the study has little to offer either because the code authority has failed to make information available, because the price provisions of the code are unusual, or because the code provisions have too recently gone into effect.

Upon the other codes more useful information has been obtainable. But upon these codes too it has been gotten with difficulty and in fragmentary form.

Most of the responses of code authorities were delayed. A letter of reminder was sent March 15–17. In some cases further correspondence or a call by a field investigator was necessary to elicit replies which could be used.

The price information obtained from most industries has been less than was needed. Scarcely a code authority sent all the price lists requested. Some code authorities did not send any lists. Other code authorities sent sample lists, which in many cases were so selected that each list covered different products and no price comparison was possible.

The delays and difficulties were evidently due to varying causes. In some cases the volume of the price records was responsible. The National Electrical Manufacturers Association for example, has 40 file drawers filled with price lists. In some cases, the code authority was not yet adequately organized to keep good records and to supply them readily. In some cases code authorities evidently did not understand that comparable data were needed.

Finally, although in no case did a written reply refuse to cooperate, there was in some cases a well-defined reluctance to furnish the needed information. The most striking instance was supplied by the secretary of the Paper & Pulp Association who, in a call upon those direction the study, stated that he thought the members of the industry would not reply to the questions asked, gave as his reason a fear that concerns might tell tales on one another, and commented, "Why should we stick our necks out?"

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., January 22, 1932.

In replying, please address:
Corwin D. Edwards, economist.

DEAR SIR: The Consumers' Advisory Board of the National Recovery Administration is trying to find out to what extent price competition has changed in the last few months. We are particularly interested in the effect which open price provisions of codes have had upon prices.

May I ask you to help us by telling us of any cases of uniform bids which have come to your notice since last July? In each case we should like to know the specification of the product, the number of bidders, the range of the bid prices, and the range of these prices on previous bids under the same specification. It would be helpful in getting a picture of the situation to know the names of the bidding concerns in order to determine how far the uniformity might be accounted for by intercorporate connections. However, these names are not essential since our desire is to find out what is going on in the various industries rather than to identify or bring pressure to bear upon various individuals.

We are also interested in cases in which most bids were uniform but one or two diverged and in cases in which you have had notice of price changes which have made prices uniform even though you may not have called for bids upon the particular product.

We should like to prepare a report upon this subject fairly soon, and hence would be grateful for an early reply.

Yours very truly,

DEXTER M. KEEZER,
Executive Director, Consumers' Advisory Board.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., February 17, 1934.

Please address replies
(Attention of Enid Baird.)

DEAR SIRS: General Johnson has asked the Consumers' Advisory Board to address some questions to concerns operating under open price systems, and to present the answers at the meeting of code authorities in Washington, March 5.

In this connection, we are desirous of obtaining the following lists, as completely as you can quickly give them:

1. List of names and addresses of members of your industry.
2. List of names and addresses of members of your industry who are not members of the trade association, or associations, that sponsored the code.

Will you please check a limited number of companies which will be representative of the most important branches or subdivisions of the industry, of large and small concerns, and of different sections of the country, marking each one in such a manner as to indicate (1) its branch or subdivision of the industry, (2) whether it is large or small.

If your industry is organized with divisional code authorities, would you kindly ask each one of them to transmit to us direct the information requested above.

Since there is little time before the meeting we should appreciate a reply at your earliest possible convenience.

Very truly yours,

DEXTER M. KEEZER,
Executive Director, Consumers' Advisory Board.

Form no. 1.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., March 19, 1934.

DEAR SIR: General Johnson has directed the National Recovery Administration to collect facts about the working of open-price provisions under approved codes. The information will be used to determine whether open-price systems have had beneficial results in the industries in which they have been set up; and whether such systems have given rise to abuses. The inquiry represents an effort to base the administration's policy upon the facts rather than upon opinion and argument.

May I ask you, as a member of an industry whose code contains an open-price provision, to cooperate in this study?

On each of the following points we should like as detailed an answer as you find it possible to give. Please indicate the code and industry in your reply.

1. Has the open-price system thus far helped you in any way? (Please be as specific as possible as to the nature of the help and support your statement with whatever evidence is available.)
2. Has the open-price system hurt you in any way? (Please be as specific as possible as to the nature of the hurt and support your statement with whatever evidence is available.)
3. Give the first price list you filed under the code and the price list which you had on file February 15.
4. Has there been any narrowing of the spread between the lowest and highest price filed since the first filing under the code? If so, are the present prices identical or substantially identical? (Lists of the prices then and now on file would present the clearest answer to this question, if such lists can be offered for all or most members of the industry.)
5. Has any pressure been brought to bear upon you by the code authority, competitors in the industry, or others, either to persuade you to raise the price which you had on file or to refrain from making effective a price change which you contemplated? If so, please state the source and the nature of the pressure, the nature of the price objected to, and your eventual action. (Answers to this question will be used only for purposes of the study and not, unless you give specific permission, for any proceedings against persons involved in such instances.)

NATIONAL RECOVERY ADMINISTRATION,
Room 1136, Investment Building.
Form no. 2.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., February 20, 1934.

(Attention of Enid Baird.)

DEAR SIR: General Johnson has directed the National Recovery Administration to collect facts about the working of open-price provisions under approved codes. The information will be used to determine whether or not open-price systems have been beneficial to the industries in which they have been set up; and whether they have given rise to abuses which might work a hardship to the consumers of the products.

May I ask you, as a customer of industries operating under open-price provisions to cooperate in this study?

On each of the following points we should like as detailed an answer as you find it possible to give:

1. How has the open-price system in other industries affected the price of products you purchase? (Please be as specific as possible in your answer and support your statement with whatever price data are available.)
2. Have you observed any general or simultaneous price increases from different sources of supply? (Please give the dates of any such increases and the comparative prices before and after the increase.)
3. Has there been any narrowing of the spread between the prices quoted by the different companies for the same product? If so, are the present prices identical or substantially identical? (Examples of such identical prices should be included.)
4. Have there been any general changes in trade terms—i. e., in cash or quantity discounts, or from f. o. b. point of origin to delivered prices?
5. Have any efforts been made to require resale price maintenance on the products you buy?

Answers to these questions will be used in a general appraisal of open-price provisions in codes.

Very truly yours,

DEXTER M. KEEZER,
Executive Director, Consumers' Advisory Board.

Form no. 3.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., February 23, 1934.

GENTLEMEN: Supplementing my recent invitation to a conference of code authorities on March 5, 6, 7, this letter is dispatched to code authorities for those industries whose codes contain open price provisions. Your assistance is desired in formulating a policy on price publicity which will be satisfactory and practical for both buyers and sellers. Therefore, may we have, before March 1 if possible, any pertinent information which you can furnish. You will be entirely free to modify or add to this information in your presentation at the public conference. The following will suggest the type of information needed;

(1) Copies of all price information set out by the code authorities to members (whether reprints of individual members' price lists, composites, or informal communications).

(2) Were prices in your industry less uniform than at present (*a*) during the depression prior to the recovery program? (*b*) Prior to the depression?

(3) In how many cases were revisions filed by members after receipt of preliminary information regarding competitors' prices and what was the nature of these revisions?

(4) In how many cases has it been necessary to challenge filed prices as violation of the "selling below cost" provisions or for other reasons, and what was the nature of these instances?

(5) Have any members of your industry proposed price revisions which they decided to withdraw before the effective date?

Any other suggestions or observations which you may wish to offer will be welcome.

Very truly yours,

HUGH S. JOHNSON,
Administrator National Recovery Administration.

Form no. 4.

APPENDIX B. EXAMPLES OF PRESSURE TO MAINTAIN PRICES

BUSINESS FURNITURE, STORAGE EQUIPMENT, AND FILING SUPPLY INDUSTRY, CODE NO. 88

The code authority fixed prices and told members that they would be violating the code by selling lower.

(This code provides for an open-price system with a waiting period and for no sales of base products below individual cost. The code authority may state for variations from base products the minimum additional to and maximum deduction from the price of the base product. All such additions and deductions must be based upon direct cost.)

Letter of February 28, office-equipment manufacturer:

"In the matter of the Business Office Furniture Code, the price of $24.25 was fixed by a price committee. We had no part in the formulation of this price.

"Thereafter we were approached by several of the code committee, and other members of the industry, with the argument that unless we published prices in line with the $24.25 price which they had fixed, they would meet whatever price we fixed.

"We attended exactly four meetings in which the matter of prices was discussed, and in which we were told that we should meet the $24.25 price. We were also told that it was the code authority's ruling that in connection with these prices, we would have to publish an increased price for zone 2 of 10 percent and a further increased price for zone 3 of 20 percent.

"We advised the meeting that we considered the fixing of the price of $24.25 too steep an advance over our then existing price of $10, in that it would increase the wholesale price to $15.62. We suggested that the proper advance would be to approximately $12.80, but that in view of their arguments we wanted to be cooperative and go along with them but could not hope to lose our competitive advantage by fixing any such price as they had in mind.

"We thereupon fixed a list price of $23, which brought our article down to $14.52, or $1 less than that which the other manufacturers had fixed. We were definitely advised that all members of the industry had agreed on the price of $24.25.

"In fixing our price at $14.25 we struck an average to cover the entire country, without regard to zoning (which we felt was a fair price since freight was included), as we felt and still feel that the inclusion of the zoning provision under any enactment of the code authority is completely illegal as discriminatory.

"We state it as our opinion that there was pressure brought upon us to bring our prices up to that fixed by the other members of the industry.

"As a matter of fact, in Philadelphia, a member of the code committee and a competitor very generously told us that we were going to 'Atlanta' because we were violating the code in the matter of prices, etc."

Letter of March 3, steel-products manufacturer.

"No pressure has been brought to bear on us directly by the code authority or others in the industry, but it seems to be pretty well understood, without anybody informing you of the fact, that the larger industries will meet any price filed under the code. * * *

"* * * It is our belief that open prices have been so set that large manufacturers with national sales organizations can sell direct at a profit, while the same prices do not give the dealer handling the merchandise of the small manufacturer who has an incomplete line enough margin of profit on which to exist."

PAPER AND PULP INDUSTRY (CARDBOARD MANUFACTURERS' DIVISION) CODE NO. 120

The secretary of the code authority threatens an unpleasant investigation of costs if filed prices are not raised.

(The code contains an open-price provision with a waiting period and a provision against selling below individual cost except to meet competition.)

Letter of January 23, the secretary of the code authority:

"Your filed prices were roughly 10 percent less than those filed by your competitors. In view of their experience in the manufacturing of a similar grade, they feel it doubtful that you could justify such prices. Consequently, I feel sure that you will want to revise your prices so that they will bear a

closer relation to those of your competitors. They pointed out that in the event you found yourself unable to cooperate, it was the opinion of some of the members that they might have to resort to procedure provided by the code. Under this provision a member may complain to the code authority in regard to your price schedule. This will lead to an investigation to ascertain whether this price can be justified * * *. Such a procedure is, of course, unpleasant and costly. I am sure this matter can be straightened out without resorting to any such action.

"It was pointed out that in the event the investigation proved that this price schedule could be justified on the basis of your own cost, that the members would then be forced to meet your price. This would then destroy your existing competitive advantage and merely serve to lower the existing price structure to no avail."

FUNERAL SUPPLY INDUSTRY, CODE NO. 90

Code authority and competitors ask withdrawal of filed prices and make determined effort to establish uniformity.

(The code provides for open prices with a waiting period and for no sales below cost.)

Letter of March 9, casket manufacturer:

"We have had several telephone calls and telegrams, not only from the code authority, but from competitors, asking that we withdraw our filed-price changes, because it is necessary to notify all our competitors of such changes, and they would meet us, and we would not get any more sales. Our answer has been that we would be at least on an equal basis and would be nearer to the hand shops and to the large manufacturers who have been giving credits and misbilling, and all other ways of chiseling on prices. We have had letters from southern and western districts, suggesting that we were pulling down the industry, and unless we refrained it would be necessary for their districts to cut prices."

Letter of March 14, undertakers' supplies manufacturer and jobber:

"We have in our files a letter from the code authority objecting to some of our prices on account of their being lower than one or two of our competitors.

"Under the code, it seems to the writer that several of the large manufacturers have taken advantage of the code originally signed by the President and set up a code of ethics and prices to suit themselves. And if the code is enforced by the larger manufacturers, it certainly will not help the smaller ones any."

Letter of March 21, casket manufacturer:

"We think a determined effort has been made to establish a uniform price for standard caskets all over the eastern United States—that is, broadly speaking, east of the Rockies—but without much thought to varying conditions existing among manufacturers. This has been done by meetings, visits of agents, and letters from headquarters. We have resisted in some cases and kept our prices down below what we were told others were asking, where we thought the cost did not justify any higher price. But, as a general rule, we believe we have been getting for our goods as much as the average factory says it has been getting. There are a number of factories which are openly way below the majority. We believe there are enough others who are somewhat below us to make it difficult for us to get our share of the business.

"It seems to us that to force every factory to make and to get the same price for a carefully described and comprehensive line of caskets without regard to varying productive conditions and selling obstacles is to destroy the balance worked out by years of competition and thereby enrich some and impoverish others, unless you go the whole length and assign each factory a definite quota of the business.

"We would like to be definitely advised, if it is within your province to do so, just how far we have to obey the code authority in the matter of price, standards of manufacture, sale of close-out goods, etc."

FIRE EXTINGUISHER APPLIANCE MANUFACTURING INDUSTRY CODE NO. 98

Two members of the code authority report "persuasion" of recalcitrants.

(The code provides for an open-price system with a waiting period, and for no sales below the lowest cost of a representative member of the industry. The code authority may define differentials and trade factors subject to the

approval of the Administrator, but such differentials and trade factors have not been approved.)

Letter of March 20, fire-extinguisher manufacturer, who is a member of the code authority:

"The present prices prevailing in the industry while not identical, might be said to be 'substantially identical.'

"It is only fair to state that the writer is a member of the code authority of our industry, consequently where there has been pressure or persuasion on the part of the code authority he has been a party to it. No pressure has been used other than that the code authority did direct the attention of the members of the industry to the provisions of the code, and to the fact that the publication of prices below the 'representative cost' established by the code authority under the provision of the code, would constitute a violation of the code. Persuasion was, of course, used in some instances to try to obtain the cooperation of recalcitrant members in accepting the classification and differential definitions established by the code authority and as may be deduced from answers to previous questions the persuasion of the code authority was reasonably successful."

Letter of March 20, another fire-extinguisher manufacturer, member of the code authority:

"It is only fair to state that the writer is a member of the code authority of our industry. No pressure has been used, in my belief, by our code authority, unless it was to direct the attention to the provisions of the code. Persuasion was, of course, used in some instances to try to obtain the cooperation of members of the industry, and when I say this I mean that the one or two bad boys or chiselers were asked, with all others, to accept the classifications and differentials established by the code authority. Some of these chiselers are still attempting to demoralize our industry."

Letter of March 6, fire-extinguishing-appliance manufacturer:

"We are taking the liberty of enclosing a copy of telegram received from ———, on the code authority, in which he threatens prosecution if we do not accept the cost arbitrarily set by the code authority. We believe that this was a very unfair procedure as we were never given, in our opinion, the right consideration in the filing of our costs. It is our opinion that to arbitrarily set a ridiculous cost on this commodity is to gradually stifle the industry. One of the most ridiculous things in the whole set-up is the fact that you are allowed to quote distributors your cost. This in itself, we believe, is a direct violation of the code and shows absolutely that the cost, as set by the code authority, is not authentic.

We might add that we are thoroughly disgusted with price fixing but are heartily in accord with the President's blanket agreement which sets a definite number of hours for the working men and a definite minimum price to be paid these men for the number of hours set.

Filed prices were withdrawn by a member of the industry who "could see that it wouldn't help us any."

Letter of March 10, small manufacturer of appliances.

"The open price provision in our code, coupled with a minimum cost for the industry, will unquestionably result in all prices being the same. It practically is the same as if the code had ordered price fixing.

"We did file a price list with 1-quart extinguishers at $12.25, but the code authority did not send them out and we later withdrew them, because we could see that it wouldn't help us any.

"The large companies have set a list price of $14."

LADDER MANUFACTURING INDUSTRY, CODE NO. 107

Code authority attempted persuading a member to adopt uniform delivered prices and discounts.

(The code provides for open-price system with waiting period, such lists to be distributed to all members. The code also sets up a customer classification and prohibits selling below "individuals delivered cost" except to meet competition.)

Letter of March 1, ladder manufacturer:

"Referring to the copies of the letters which we are enclosing herewith together with price list and scale of discounts attached, may we state that more than 95 percent of the ladder manufacturing industry have filed a uniform price list and discount sheet."

Letters enclosed included numerous communications insisting upon an allocation of expenses and upon the importance of uniform prices and discounts.

The following excerpt was from a letter dated November 24:

"At this meeting it was the unanimous opinion of those present that orderly enforcement of the code demanded the adoption of uniform price lists, discounts, and terms. * * *

"I am enclosing herewith a copy of the price list, discounts, and terms adopted. Since every manufacturer present declared his intention to file his price list, discounts, and terms in exact conformity with those enclosed, you may do so, even though it may result in your selling some items below your cost.

"If your price list, discounts, and terms vary in any detail from the ones enclosed, it may be necessary for you to prove to the code authority that you are selling above your cost."

Letter of March 5, ladder manufacturer:

"The price set-up as originally drawn up by representatives of the western ladder manufacturers is, I believe, nearly identical with the one in use at present.

"I would not say that there has been any pressure brought to bear upon me by the code authority although their requests and wishes were at times urged rather strongly."

Letter of February 28, ladder manufacturer:

"* * * the list price, which is also called the consumer's price, is away out of line; in fact it is higher than it was during 1928 and 1929. This exorbitant list price was set up in order that a discount of 50 percent might be extended to a list 'alleged jobbers.' It is our contention that the consumer's price should be materially reduced, and that the jobber's discount should be set at 20 percent for carload orders and 25 percent for less-carload orders, f. o. b. factory.

"The open-price system has hurt us as manufacturers considerably, due to the exorbitant discount which our code authority set up for jobbers * * * it is our contention that the approved jobber's list set up by the code authority under the ladder code, is approximately 90 percent actual retailers and only 10 percent jobbers."

MARKING-DEVICES INDUSTRY, CODE NO. 59

The Trade Association threatened "immediate action" against a price cutter.

(The code provides for an open-price system with a waiting period and for no sales below individual cost.)

The following is from a photostatic copy of a letter:

"We understand that you are sending out cards quoting 35 cents for 5-line endorsement stamps with borders. This does not meet with the prices agreed upon by the manufacturers in accordance with the International Stamp Manufacturers' Association and our adopted code. In view of the above we expect a reply from you by return mail as to what action you will take in the matter. If we do not hear from you it will be necessary for the writer to hand this matter over to the executive committee for immediate action."

In a letter of March 5 the manufacturer himself writes:

"Our code was signed as stated above, but as yet the International Stamp Manufacturers' Association has not agreed on a price list, and it seems to me that we are all working under any price list that we may see fit, which is indeed very a unfavorable condition.

"This firm has operated in the red for the past 5 years, and if there could be a legitimate price list established and put into operation, no doubt we could come out from under and take a place with other industries who are working under the same system. We are informed by the International Stamp Manufacturers' Association that a schedule of prices will soon be ready to be put into operation, and just as soon as this is handed to us we will endeavor to carry it out to the letter and will expect everyone else to do the same."

CAST-IRON SOIL PIPE INDUSTRY, CODE NO. 18

Code authority uses various forms of pressure against low-priced firms.

(The code provides for an open-price system with a waiting period and for no sales below reasonable cost.)

Letter of March 15, fittings manufacturer.

"A few weeks ago the writer called on one of his customers and the customer during the course of the conversation told me the monthly production of several manufacturers and explained that he knew our production, sales, etc. This information is given confidentially to the Soil Pipe Association, and according to the code is kept in confidence. We are considering refusing to make additional monthly reports, because of this very incident. Our customers and competitors have no right to know exactly what progress we are making. The information which our code requires is very unfair in our estimation."

A later letter, March 30, from the same manufacturer:

"Mr. ———, a member of the code authority, told me at the meeting held in Cleveland some time ago that he was not threatening us, but if we did not straighten out our price situation in Kansas City it was quite possible that he would open a soil-pipe factory in this district.

"Mr. ——— asked us in Washington to bring our price up to his level as he thought we would still get a substantial amount of the local business in this district. One of our friendly competitors informs us that at a recent meeting held in Cleveland it was general conversation that our company and ——— Co. had sold 15 percent of the pipe sold in the United States during the past 60 days ending March 1, and that if we continued this operation the general price would be lowered.

"You understand that we are located in Kansas City, Mo., 746 miles from our nearest competitor, and we are producing our pipe from high-quality scrap which we are able to obtain at a cheap figure from local dealers. We are paying 20 percent more for both skilled and unskilled labor than is being paid in the South. With our low material cost and proximity to market we think we should sell our merchandise at a price yielding a reasonable profit and based on our own cost and that is the policy we are pursuing."

Letter of April 3, same manufacturer.

"We are enclosing photostatic copies of two letters written by ———, a member of the code authority for the soil-pipe industry and general manager of the ——— company.

"These letters express the attitude of the members of the Soil Pipe Association toward us and show to what ends they will go in trying to harm us.

"We are only trying to supply our own territory with its requirements. We are complying with the code in every respect. Our code requires that prices be published and because we published a price of $5 per ton under the majority of the manufacturers they call us price cutters, say we have second-quality material, say we are not complying with the code, and many other things.

"We really gave Mr. ——— credit for being too smart a man to write such a letter.

"The southern members of the Soil Pipe Association are endeavoring to get manufacturers in other districts to agree to allocation, but they have been turned down. Allocation would mean an immediate advance in price and the price is already plenty high, if not too high."

TOY AND PLAYTHINGS INDUSTRY, CODE NO. 86

Pressure has been used to raise prices to consumers and jobbers.

(The code provides for open prices with a waiting period and for no sales below cost.)

Letter of April 2, crayon manufacturer.

"Under pressure we tried to raise our prices, received no orders, had to drop them, and lost customers.

"Pressure has been exerted by our competitors to raise prices almost double to the consumer and $1.85 to jobbers.

"The code authority office sends us no information."

Letter of April 6, sled manufacturer.

"No code authority was used, but members of the code introduced considerable pressure in an endeavor to capture for themselves certain advantages in the industry. These attempts with one or two exceptions were made by persons that were not actually engaged in the industry at the time the depression really began and it is quite evident that a certain class of manufacturers were trying to convert for their own use a very liberal proportion of the sales outlet and will succeed if their plan is allowed to operate."

Letter of April 6, small crayon manufacturer.

"The open-price policy spells disaster for the small manufacturer in our industry. There are, altogether, less than a dozen manufacturers of chalk crayon in this country, two of which number are extremely large organizations, who have been attempting to dominate the industry ever since we can remember. Prior to the N. R. A. we at least had a chance of selling our goods, little as it was, at prices that gave us a profit. Now, we are confronted with a policy that practically disables us from marketing our merchandise * * *

"The large manufacturer, having his advertised brands well established in the schools, has very little competition, since most schools insist on advertised brands, and maintains his high prices there, but he sets up new brands of equal quality at lower prices to meet the manufacturer who dares file low prices. In other words, he uses the open-price policy as a whip over the small manufacturer to raise prices, and if the small man does not fall into line, he will be met or even beaten with new brands, on the little business he may be able to obtain, while the large manufacturer gets his high prices for his advertised brands.

"This is an exact condition in our industry."

Letter of April 9, baby-carriage manufacturer.

"While we have some documentary evidence showing that we have been injured by the open-price system and that pressure is being brought to bear, nevertheless the majority of the evidence we have is verbal evidence."

CARD CLOTHING INDUSTRY, CODE NO. 222

Under pressure, a small manufacturer unwillingly raised his prices.

(The code provides for an open-price system with a waiting period and for no sales below individual cost except to meet competition.)

Letter of April 3, small manufacturer of textile products.

"A meeting was held in Boston which I did not attend. The night the meeting was held one of the men who had been in attendance at the meeting called me on the telephone and asked me to meet him for a little talk. I told him that I would be busy until late in the evening. He said that did not make any difference to him—that he would meet me at any time, so I met with him. He talked about general things, and eventually got around to talking about prices. We talked about an hour, and I would not commit myself as to my intentions regarding filing prices. There was considerable pressure put on me then. I was then urged to meet with some other men in Boston the next day, and I did so only because pressure enough was put on that I did not want them to think that I was not willing to meet with them and be a good sport.

"We met the following morning and for several hours these men talked with me, explaining how a small manufacturer in the steel business was taken to Washington and his prices forced into line with others, and so forth, and how this and that concern had failed only because they did not get high prices for the goods sold. When we parted that day, I had not committed myself to file prices as they intended to do, nor did I on the day the prices were filed, February 8.

"My first filed list apparently was the only one different from the others. As soon as the prices were available to one another, I received telephone calls from some of the manufacturers and they were very much disappointed because my prices were not the same as theirs.

"Eventually there was enough pressure put upon me so that I refiled my price list and as far as I know it was like all the others in the industry. My first list, I believe, was never officially recorded, and the records show only my second price list.

"I based my original price list on one which was used in 1926, and to my mind it was in line with the general line of things as they are today."

PLUMBAGO CRUCIBLE INDUSTRY, CODE NO. 63

Code authority and competitors tried in vain to induce a member to raise prices to the common level.

(The code provides for an open price system without a waiting period.)

Letter of March 9, crucible manufacturer:

"Pressure has been brought to bear upon our company by code authorities and competitors in the industry who have tried to persuade us to raise prices which we have on file. The nature of the pressure has been their objection to our filed price being from 1 to 3 cents below the prices filed by our competitors. We have taken no action."

VITRIFIED CLAY SEWER PIPE MANUFACTURING INDUSTRY, CODE NO. 136

Small manufacturer complains that pressure to raise prices has been exerted by larger competitors whose officers are members of the code authority.

(The code provides for an open price system with a waiting period, and for establishment of standard terms of sale and cash discounts to be determined by regional committees. A for allowable cost is in the code.)

Letter of March 27, small fire-clay manufacturer:

"We do not think that there has been any narrowing of the spread in prices filed, as the prices filed were practically all arrived at by collusion before the first ones were filed, and all prices now are arrived at same way, other than exceptions, which are frequently filed to meet local conditions and competition from other conditions and materials with which we compete.

"There is continual pressure brought to bear by the regional committee and the larger competitors in the industry to keep the price agreed upon always the same under whatever conditions and to regulate the methods of selling and terms of all kinds which are greatly to the advantage of the large manufacturing units in the trade. As an example of what we personally are up against, we manufacture a small line comprising comparatively few items of the general vitrified clay products industry. These in times past have been sold by mail as our line was too small to warrant covering our wide territory by traveling salesmen. As this method of selling has been much cheaper, we have been able to make slightly more advantageous terms to the trade, which held our customers as against competition where salesmen called on them frequently. With prices and terms all absolutely uniform the companies with salesmen soon have our share of the business.

* * * * * * *

"Prices have been raised from 25 percent to 200 percent, varying in different districts. Most of these prices were put into effect shortly before the adopting of the code. Under N. R. A. costs have advanced from 25 percent to 40 percent."

ELECTRICAL INDUSTRY, CODE NO. 4

Trade association has exerted pressure to bring the prices of one member of the industry up to the level of the prices quoted by competitors.

(The code provides for open prices with a waiting period and for no sales below cost except to meet competition.)

Letter of March 15, electrical manufacturer:

"There have been repeated attempts, not by code authorities but by manufacturers, to raise price levels. They have been raised in some instances, however have collapsed in our estimation due to our reasons given above."

(Reason: Tendency to meet lowest price filed.)

Letter of March 2, signal manufacturer:

"There has been much pressure brought to bear upon us to have us set our prices at the same level as prices of competitors. It has been emphasized to us that if we established lower prices than competitors, our competitors would merely revise their prices and a price war would ensue. This pressure has come principally from the National Electrical Manufacturers Association."

Letter of March 7, electrical manufacturer:

"We have not made any changes in the margin of profit allowed to our dealers or our jobbers, although it was suggested to us by one or two manufacturers that we decrease our discounts or increase the quantities necessary to obtain the maximum discount by various classes of trade."

COPPER AND BRASS MILL PRODUCTS INDUSTRY, CODE NO. 81

Various members of the industry used pressure to make a smaller competitor raise his filed prices.

(The code provides for an open-price system without a waiting period.)

Letter of March 14, fabricator of brass and bronze products:

"Pressure has been brought to bear upon our industry by various members of the industry, but not by the code authorities, to raise prises which we filed on December 13, 1933. We had filed the lowest quantity prices and a number of the large fabricators wished us to revise our quantity schedule, as well as our base prices. We did revise the base prices upward, but the quantity schedule we refused to revise."

WARM AIR FURNACE MANUFACTURING INDUSTRY, CODE NO. 187

One big concern was telling the customers of a price cutter that they could meet his prices and put him out of business.

(The code provides for open prices without a waiting period and for no sales below individual cost except to meet competition.)

Letter of March 1, furnace manufacturer:

"* * * We attach herewith price list issued by us to comply with the Warm Air Furnace Industry Code. Please note the lines surrounded in red, which was inserted by us as a warning to our 110 competitors, a few of whom were murmuring threats to our customers, and intimating that they were going to send us to Leavenworth as "price-cutters." As a concession to these parties we did advance our prices after the code went into effect, so that we would not be over 20 percent below our competitors' post-code prices. We are the only concern in the industry which sells for cash only to dealers and jobbers, by mail and without salesmen. The savings so gained are considerably more than 20 percent. We have not joined the Warm Air Furnace Association because we do not wish to be outvoted 100 to 1.

"We can prove that one of our competitors, whose officer is one of the six members of the code authority, has been telling our customers and their own whom they feared might come with us as some have since, that they were in control now, so that they can fix prices and put concerns like us where we belong.

* * * * * * *

"We know to a certainty that there has been all sorts of collusion in price-fixing in addition to the monopoly except for a few independents."

FOLDING PAPER BOX INDUSTRY, CODE NO. 193

Pressure to raise prices in order to protect the high-cost producer.

(The code provides for an open-price system, with a waiting period required except when prices are increased, and for no sales below individual cost, except to meet competition.)

Letter of March 23, paper box manufacturer:

"Pressure has been brought by members of the code authority and competitors in the industry with the idea of raising prices, so that the high-cost producer can be protected in his local market. To this we have never agreed."

CAP AND CLOSURE INDUSTRY, CODE NO. 58

Several companies report that pressure has been brought to bear unsuccessfully upon a price cutter.

(Code provides for open price system with waiting period. Terms and discounts may be established by majority vote.)

Letter of March 2, from a chamber of commerce representing one of its members:

"There is a firm in this industry which manufactures tin boxes and other articles in addition to metal-screw caps. * * * They have been recalcitrant in cooperating with the rest of the industry. The price list that they submitted at first was vague and indefinite. Finally the code authority forced them to publish a list. Because of the publishing of this list, many firms in the industry were forced to reissue their published price lists and to establish some prices less than what they had received in 1933. * * * the code authority has from time to time attempted to establish a cooperative spirit between the company above mentioned and the rest of the industry, but to date have failed."

MOTOR FIRE APPARATUS MANUFACTURING INDUSTRY, CODE NO. 108

The code authority sent out a suggested list of prices which the members feared to cut.

(The code provides for an open-price system with a waiting period and for fixed cash and quantity discounts, minimum down payments, and after the approval of the Administrator the specification of standard equipment.)

Letter of March 1, manufacturer of fire apparatus:

"We have before us, as received from the code authority or the Motor Fire Apparatus Manufacturers Association, we do not know which, a schedule showing what constitutes regular equipment for a triple-combination pumping engine. Also, a schedule of prices listed as extras and not included in the regular equipment, at so much each, if they are specified in the purchaser's specification.

"We have been holding strictly to these prices for fear they were authorized by the code authority and might possibly get us in bad if we did not sell at the schedule price for extras. There are a great many items priced in this list that we can produce probably a lot cheaper than some of the bigger corporations who have terrific overhead."

Letter of March 5, small manufacturer of motor fire apparatus:

"* * * At the first meeting of the fire-apparatus manufacturers there was some talk of bringing some pressure to bear upon firms who priced their apparatus lower than some of the others, but so far there has been no pressure brought to bear upon us leading toward a raise in our price to customers."

GASOLINE PUMP MANUFACTURING INDUSTRY, CODE NO. 26

A company resisted efforts of competitors to change its quantity discount.

(Code provides for open-price system with waiting period, no selling below individual cost as determined by uniform cost system. Code also states terms and conditions of sale but not discounts to trade. List to be distributed to all members.)

Letter of March 12, gasoline-pump manufacturer:

"The great majority of pumps purchased for filling stations are bought and used by the larger units of the oil industry. For this reason, I filed on February 16 a price list headed 'Quantity users' discounts.' This price list gives the buyers having a large number of stations the maximum discount in their respective classes, regardless of the number of pumps purchased. The quantity discount is still in effect. An effort was made by other members of the industry to have me withdraw this decision on the grounds that it was unworkable. In lieu of this they asked me to file a price increasing the list prices 10 percent and eliminating the quantity discount schedules as of September 25, making only one discount and that being 10 percent to buyers of 10 pumps or more in one shipment. This set-up would have turned all of the pump buying into the hands of the jobbers. The jobbers are not bound by the code and can make any price that they choose. In view of the fact that the large pump companies have a complete line of gasoline pumps, lubricating oil pumps, air compressors, hydraulic hoists, etc., while the small manufacturer only makes gasoline pumps, they have a decided advantage in placing their whole line in the hands of the jobbers. In view of this fact, the writer refused to withdraw this price filed on February 16, becoming effective March 5."

ASPHALT SHINGLE AND ROOFING INDUSTRY CODE NO. 99

A company reports pressure to abide by a merchandising plan not officially approved.

(Code provides for open-price system with waiting period, with price lists and also names and locations of his distributors to be sent to all members. No sales below individual cost except to meet competition. Merchandising plan to be set up with approval of Administrator.)

Letter of March 14, asphalt shingle and roofing manufacturer:

"No; directly with relation to prices. Every effort, however, has been made to have uniform merchandising plans and methods of selling. This has reached the point where an amendment to the code to provide for a mandatory selling plan has been approved by the dominant factors in this industry."

MACHINED WASTE MANUFACTURING INDUSTRY, CODE NO. 149

One company was asked by the code authority to file a price the same as that of other companies.

(Code provides for open-price system with waiting period, such lists to be distributed to all members. Terms and dealer commissions sent in code. No selling below individual cost as determined by uniform system.)

Letter of February 28, machined-waste manufacturer:

"Yes. In one specific case we made a bid on a railroad specification waste and were the low bidder, and as such should have been entitled to the business. This quotation was made before the open-price provision went into effect and had not been accepted by the railroad. We let the price stand until the time came to file prices with the code authority, and this price was withdrawn with all others until we could have time to post new prices with the code authority. The code authority, not knowing that we had withdrawn this price, asked us to file the same price with this railroad as filed by the other members of the industry. We did as requested, the result being that we did not get any of this railroad business.

In another case we bid on a railroad specification, and was awarded and accepted a contract for what the railroad might order from us over the first 6 months of the present year; all of this taking place before the open-price system went into effect. Again we were the low bidder, and our competitors asked us to raise our price to this railroad, even after we had accepted the contract. This, naturally, we could not and would not do. The result was that other members of the industry revised their prices to meet our price, and we have not received any orders from this railroad over the first 2 months' contract period."

RUBBER MANUFACTURING INDUSTRY, CODE NO. 156

Large concern asks smaller competitors to agree to quote the same prices.

(The code provides for open prices with a waiting period in all divisions but one; and for the use of either individual cost or lowest representative cost in all divisions.)

Letter of March 1, rubber-hose manufacturer:

"In December 1933, just prior to the signing of the code, a representative of the ——— Co. called the writer on the telephone, furnishing prices on hose which showed a marked increase over previous quotations and requested that we 'go along' with the others. This same procedure was used last June when Mr. ——— of the ——— Co. called me over the telephone, stating that he had been selected by the Rubber Manufacturers Association to draw up a code and we in turn were furnished with prices which other manufacturers had named. It was stated by Mr. ——— at that time that we might quote 5 percent under these prices without objection from his group."

Letter of April 11, small rubber manufacturer:

"It has been suggested that we raise most of our prices. The raises suggested have in the light of our costs been too much. We object to having prices set for us because we feel as a small manufacturer that we must have a lower price than the large manufacturer. The large manufacturers have a greater sales coverage and because they nationally advertise some of their products have a distinct advantage over the small manufacturer, which advantage can only be offset by a lower price.

"Small manufacturers, provided they do not sell below cost, should have the privilege of selling at lower prices than the larger manufacturer whose greater costs are usually the result of greater sales coverage, national advertising, and so forth. If such large manufacturers elect to develop such conditions then the added costs that are developed because of these situations should mean a higher cost of their merchandise and a higher selling price. The large manufacturers have some inherent advantages that they do not wish to surrender and at the same time they do wish the smaller manufacturer to surrender his inherent advantages."

Letter of March 23, rubber manufacturer:

"We were asked by a very promising outstanding concern to agree to follow their prices but we found that prominent as they were they were evading every provision that they had asked us to adhere to. This can be proven."

RUBBER MANUFACTURING INDUSTRY, CODE NO. 156

Letter of March 20, rubber manufacturer:

"Our rubber division is a new department. We are finding it difficult to break into the market at prices on a level with competitors and a product unknown. Under the wording of the rubber code if we were to file a reduced list, competitive industry would either do likewise or make business dealing very unpleasant.

"One company filed a price lower than the rest and they finally sent in prices on an equal basis. The cause is self-evident.

"There is a new set of prices now being circulated. We have not filed any as yet—the tendency is upward.

"We were urged to place a price in line with the rest of the industry. The fact that all prices are equivalent is sufficient evidence of a compact."

STRUCTURAL CLAY-PRODUCTS INDUSTRY, CODE NO. 123

Prices were fixed at a meeting at which the complainant stated that he was outvoted and the prices put higher than he wished.

(Pending the determination of an allowable cost composed of individual direct factory cost plus weighted average indirect allowable cost, any regional committee is permitted under this code to determine allowable cost after a survey of the estimated cost of reasonably efficient plants. There is also a provision for an open-price system with a waiting period.)

Letter of March 5, fire-brick manufacturer:

"Our price system looks like a closed price to us, as the code authority at their first meeting December 14, 1933, set up a net delivered price of $11.50 for the whole State of Mississippi, we voting for a plant price, the only price we thought was fair.

"It looks like to us that the large brick plants in the region want a delivered price, and want that high enough so that they can ship into our territory at a profit. We do not believe that you will aid recovery by charging more for brick than they are worth."

CROWN MANUFACTURING INDUSTRY, CODE NO. 77

A meeting of the industry fixed the prices higher than the complainant desired.

(The code provides for open prices with a waiting period, but has no cost provision.)

Letter of March 9, manufacturer of corks:

"I would suggest, however, that this provision in the open-price system which calls for a certain number of days elapsing before a change becomes effective be eliminated * * * there was upon the original filing of the open-price schedules by members of the industry a majority quoting the same price. There were three or four manufacturers who had a differential of between 1 cent and one-half cent less than that of the majority.

"The first prices submitted under the Crown Manufacturers Code were not distributed to all manufacturers by the code authority of the industry before a meeting was held at the Pennsylvania Hotel in New York City during the beginning of December 1933. I personally attended this meeting, representing the ——— company, and at the meeting various phases of the code were gone into and discussed by the members, and after several explanatory remarks had been made there arose the question as to what the manufacturers were going to do about new prices. It was first decided that all members should file their new prices to become effective January 2, 1934.

"* * * I stated that I was not in favor of this increase, as I felt it to be in excess of the actual cost of the industry under the National Recovery Administration.

"Part of the argument placed before me was the fact that the consumers were expecting an increased price, and they might as well get it at once rather than try and build it up over a period of time."

CRUSHED STONE, SAND, GRAVEL, AND SLAG INDUSTRY, CODE NO. 109

The correspondent was urged to agree to a fixed mark-up.

(Code provides that districts set up open-price system, with waiting period on first but not on revised filings, all prices to be distributed within the district. No sales below individual cost as set up by uniform system. Uniform terms of sale and credit provision to be set up by districts; State committees may set up provisions limiting new capacity, subject to approval of code authority and administration.)

Letter of February 28, manufacturer:

"No pressure has been brought upon me by the code authority but my competitors are trying to have me combine with them to have cement mark-up reduced to 25 percent and then they wish to mark up all other materials over 5-ton orders to 50 percent in place of 33⅓ percent. I have refused to do this

but do believe the price on cement should be reduced to 25 percent mark-up on orders more than 5 tons. I also believe that mark-up of 33⅓ percent is ample margin for a fair profit on all other materials and also that 50 percent mark-up should not be required on orders of more than 500 pounds.

"Both the crushed-stone and builders-supply industries and the retail-lumber dealers desire to combine and raise prices too high.

PUMP MANUFACTURING INDUSTRY, CODE NO. 57

The correspondent was urged to copy the prices established and published by others, although it was known that agreement was illegal.

(The code provides for open prices with a waiting period and for no sales below individual cost except to meet competition, and power of the code authority to require withdrawal of "unfair" prices after investigation.)

Letter of March 2, pump manufacturer:

"The form of the pump code itself operates to exert pressure to raise prices. The pump manufacturers have been informed that it is desirable to get their prices in line by copying each other's prices, although admonished that it would be illegal to agree to do so.

* * * * * * *

"We recommend a revision of the pump code: Abolition of weighted voting. Setting up of a code authority outside the industry. Requiring the filing of minimum prices only. Abandonment of 'time limit' so that prices will be effective on filing."

STEEL TUBULAR AND FIREBOX BOILER INDUSTRY, CODE NO. 62

The code authority requested members not to cut prices.

(The code provides for an open-price system with a waiting period and no sales at or below cost.)

Letter of February 27, boiler manufacturer:

"No one asked us to raise prices, however the Code Authority of the Steel Tubular and Firebox Boiler Industry has asked us to refrain from filing lower prices. As this is the only way in which we can secure business and keep our men employed, we intend to file lower prices very shortly."

COMPRESSED AIR INDUSTRY, CODE NO. 55

A company reports persuasion from competitors to raise prices.

(Code provides for open-price system with waiting period, lists to be distributed by code authority. No selling below individual cost as determined by uniform system except to meet competition.)

Letter of February 27, manufacturer:

"Pressure has not been brought to bear with the idea of forcing us to raise prices other than in a general discussion among the representatives of the industry and possibly pointing out where prices are appreciably different from others. Pressure of this kind, while implied and secondary, nevertheless carries considerable weight if a spirit of friendliness is to exist among the manufacturers."

PORCELAIN BREAKFAST FURNITURE ASSEMBLING INDUSTRY CODE NO. 239

Exertion of pressure tended to increase prices beyond what consumers could absorb.

(The code provides for open prices with a waiting period.)

Letter of March 20, chair manufacturer:

"There was a tendency to exert pressure on the part of manufacturers and code managers in this division who were desirous of having the manufacturers quote prices based on certain costs, but on account of the great unemployment the public could not absorb our increases, as furniture is still considered a luxury, while food and clothing are necessities."

MOTOR BUS INDUSTRY, CODE NO. 66

Efforts were made to induce a company to discontinue a low-fare ticket.

(Code provides for open-price system without waiting period on revisions, tariffs to be filed and routes to be registered with code authority.)

Letter of March 1, motor bus operator:

"No. 5. Yes. Meetings have been held from time to time among the traffic men of the bus operators, one I recall in the office of Mr. ——— of the ——— lines at which time the differential in rates was discussed between those companies who were considered a low-fare company and those rendering an equal service.

"At the time the A, the B (who were not represented), and the C lines were conceded as higher rate companies the balance were conceded a differential in rate. The B tariff was the same as the A's, their presence was therefore not necessary, although they were called and invited to the meeting, where it was anticipated that they could be induced to discontinue the use of their low-fare ticket or ——— ticket."

COOKING AND HEATING APPLIANCE MANUFACTURING INDUSTRY, CODE NO. 236

A competitor exerts pressure on a member to raise his prices on certain products.

(Code provides for filing of prices with a confidential agent designated by the code authority, with waiting period. There is no provision for price distribution. No sales below cost except to meet competition.)

Letter of March 17, manufacturers:

"We have been strongly urged by one competitor to raise the prices on certain of our cook stoves which are directly competitive with him. The competitor is Mr. ——— at the ——— Co., of ———, W. Va. He has no power to exert any pressure on us, but he has strongly urged that we increase our cookstove prices in order to make them conform more closely to the prices on his own cook stoves. Our ——— cook stove is competitive with Mr. ———'s ———. Our carload price is $9.25, while his price is $10. Our stove is slightly smaller than his and weighs about 40 pounds less. We have refused to change our prices, first, because at $9.25 we make a small profit, and second, our stove is priced fairly when compared with his, because his stove is considerably heavier."

END GRAIN STRIP WOOD BLOCK INDUSTRY, CODE NO. 185

Competitors suggested that a member increase his prices on competitive articles.

"Code provides open price systems with waiting period, lists to be 'open to inspection at all reasonable times.' No sales below individual cost as determined by uniform system except to meet competition." Terms of sale also provided.

Letter of March 13, manufacturer:

"My competitors have suggested that my prices as filed were too low and should be advanced, but did not bring any pressure to bear. I replied that the prices represented cost plus a reasonable margin and, I felt, should not be advanced, but that the customer should be protected in buying our commodity on as reasonable a basis as possible."

COTTON CLOTH GLOVE MANUFACTURING INDUSTRY, CODE NO. 187

A competitor suggested to a code member that his prices were below cost.

(Members shall publish and file with the code authority all price lists applicable to the various classes of customers, revisions to be filed when published. The code includes customer classification, terms, and freight allowance for shipments of 100 pounds. No sales below individual cost.)

Letter of March 23, Cotton Manufacturing:

"* * * No pressure has been brought to bear on us by the code authority to raise our prices or refrain from changing our prices. As to competitors, we have had no pressure exerted on us except in one instance, and in that instance the pressure merely consisted of the inquiry as to whether or not our price was below our cost, and a statement by competitors that our price was below their cost. We felt at the time that our cost on this particular item was very low, and that we wanted to take advantage of it from a sales standpoint. We did maintain the price which we originally promulgated on this item, but found in doing so it was no advantage to us."

METAL-WINDOW INDUSTRY, CODE NO. 205

Certain members of the industry discussed price levels and unsuccessfully urged another member to quote uniform quantity differentials.

(Code provides for open price system with the filing of discounts from "Gross List Prices" established by the Institute and terms and conditions of sale, such

filings to be distributed to members and all to be available to anyone interested. A waiting period is also provided. No sales below cost as determined by a uniform or a comparable system, except to meet competition.)

Letter of March 13, manufacturer:

"5. There was considerable discussion in a meeting at which various industry members were present as to what might be termed proper levels for the sale of our various products and the reasons for establishing such levels. One of the chief subjects of discussion was the proper level for the sale of small orders of light casements only, that is—in the bracket from zero to $1,000 list. The opinion of a number of companies was to quote a price higher than we felt should be quoted but, in the last analysis, we of course, used our own ideas in this matter and quoted the 57 percent discount as shown on our discount sheet which, when published, the other companies have met. Directly answering your question, we were not influenced by any pressure that was brought to bear to vary the level at which we felt these windows should be sold in small quantities."

APPENDIX C. EXAMPLES OF COLLUSION

The cases of coercion listed in appendix B include much of the evidence on collusive activity. The list of examples included here is largely supplementary in character. It includes excerpts from letters which indicate general price agreements, together with cases of absolute price identity as revealed by price lists which are entirely identical from beginning to end. It does not include as presumptive cases of collusion those industries for which uniform bids have been reported, nor complaints of collusive activity made by customers.

In some cases the evidence consists only of the adoption of a recommended price list which is generally followed by members of the industry.

PRECIOUS JEWELRY PRODUCING INDUSTRY, CODE NO. 130

The scholastic jewelry branch of this industry has united with a division of the Medium and Low Priced Jewelry Industry in adopting a uniform price schedule.

Letter dated April 4, Code Authority Secretary:

"However, an estimated 85-percent production of this product is made by members of an organization known as the 'Institute of Scholastic Jewelry Manufacturers', who have adopted the enclosed schedule, after exhaustive strain, and are adhering to these prices."

ROLLING STEEL DOOR INDUSTRY, CODE NO. 171

A standard price list is followed by members of this industry.

Letter dated March 5, steel-door manufacturer:

"We are one of the smaller manufacturers of steel rolling doors, but have been able to get a higher percent of orders since our code has been in effect, so we do not feel handicapped by being on an equal-price basis with the larger manufacturers of our industry.

"We have filed but one price list under our code. List RDI–A for service type and RDI–A1 for Underwriters' labeled doors, both as adopted by the Rolling Door Institute."

PIPE NIPPLE MANUFACTURING INDUSTRY, CODE NO. 131

Price lists filed by members of this industry are in the form of discounts applying to "standard price lists in general use by the trade and effective September 1, 1933."

Letter dated April 6, Code Authority Secretary:

"The only other revision made by a member of the industry—and not on price, but on cash-discount terms—was made in order that this member's terms conform with those of the other members of the industry."

Letter dated March 2, 1934, manufacturers:

"The list prices are the same by all manufacturers so far as we know."

BUFF AND POLISHING WHEEL INDUSTRY, CODE NO. 96

Prices in this industry are conspicuously identical, and there has been simultaneous filing of revised lists. A letter from one company suggests that these prices are "agreed" prices.

Letter dated March 2, manufacturer of buffs:

"There has been no pressure brought to bear upon us by the code authority because we are all very familiar with the cost of goods and with the recent increase in cost and various remnants, of which pieced buffs are made, they all agree without any question to the fair prices."

ASPHALT, SHINGLE, AND ROOFING INDUSTRY, CODE NO. 99

The Pacific coast producers seem to have agreed on price schedules prior to approval of the code. The code became effective November 20, 1933, but two companies filed price lists that had been issued on the 1st of September. Printed on two of these lists was the statement:

"We have signed the Asphalt Shingle and Roofing Institute Code of Fair Competition which has been filed in Washington, D. C. We will observe and operate all departments of our business in strict accordance with the code."

A third price list, issued in October, is identical with the other two and carries the title, "Suggested resale prices to consumers based on prices established at center of Pacific coast roofing industry."

RUBBER MANUFACTURING INDUSTRY, CODE NO. 156 (FOOTWEAR DIVISION)

Complainants against provisions in the footwear division of the Rubber Manufacturing Code have submitted a brief of objections, charging monopolistic activity of large companies and an attempt to fix prices during the preparation of the code. (While this brief refers to codemaking, the four companies have since refused to file their prices with the code authority and have submitted evidence to the Federal Trade Commission to support their stand.)

"Between June 27 and July 26 a draft code containing flat price-fixing provisions was prepared and approved by the division against objection.

"On July 26 it was voted by the division, against objection, that the chairman, together with three other members whom he should select, should constitute a committee to present the code * * * These representatives, so far as the complainants are informed, have constituted the 'steering committee' which, from time to time thereafter has redrafted the proposed code.

"A revised code (following establishment of a basic code) was then presented which contained price-fixing provisions for the footwear division. This revised code was not approved by the division.

"On September 26 a proposed code containing price-fixing provisions of the footwear division was submitted to the Administrator by the Rubber Manufacturers Association, Inc. This had never in its then form been submitted to a meeting of the footwear division for approval, and it contained additional provisions objectionable to these complainants.

Following a public hearing on the revised draft of the proposed code at which the complainants attended and presented a statement.

"Between October 26 and December 5 the code was redrafted by the 'steering committee' without the complainants' participation or knowledge of what changes were being made.

"On November 2 complainants made requests to General Johnson that a representative of complainants be allowed to participate in conferences with respect to revising the code, a copy of which request was sent to Mr. A. L. Viled, general manager of the Rubber Manufacturers' Association.

"On November 20 complainants wrote to the Industrial Advisory Board and also to the Consumers' Advisory Board, stating that they feared that an open-price provision would be inserted in the proposed code, giving reasons why same would be oppressive and requesting action 'against any form of price-fixing or open-price provisions.'

"On December 5 one of the complainants obtained privately a draft form of the code, dated November 20, containing cost-recovery provisions and provisions for filing open-price schedules, none of which were in the code at the date of the public hearing.

"On December 15 the code containing the provisions to which objection is made was approved by the President without ever having been submitted to the complainants. The objectionable provisions were all added by complainants' competitors after the public hearing on the code.

"On December 20 complainants obtained in Washington their first printed copies of the approved code, 5 days after its approval."

SHOVEL, DRAGLINE, AND CRANE INDUSTRY, CODE NO. 102

Letter from code authority indicates that prices are agreed upon.

"Many cases before the meetings in Chicago have indicated that every member is trying his utmost to stick to the open-price arrangement * * * no one, so far as I know, has exercised the privilege of reducing prices under the 10-day clause in our code. The moment that starts we go right back into the stupid practice of price cutting."

RETAIL EXCHANGE INDUSTRY, CODE NO. 55

One company suggests that price control has been facilitated by the code.

Letter of February 26, water-heater manufacturer:

"The open-price system has helped wonderfully, as it has effected fair prices and we have had an association which operated even before we were under the code, but it was impossible to have all join this association who were manufacturing articles in this line, and were out with prices making this line of business a losing proposition. Since the code has been in effect we have been able to bring all of these people into the association, with the result of fair prices. The open-price system has helped us considerably since it has been in effect."

HAIR AND JUTE FELT INDUSTRY, CODE NO. 72

The association has acted to establish uniform prices.

Letter of February 28, hair and jute felt manufacturer:

"On the first of this year the association decided on giving the jobbers a 5-percent rebate or over, depending on the increase in their sales this year over last year's sales * * *.

"To make matters worse, the committee is now planning on giving rebates to the dealers also. Our opinion is that this plan of rebates to anyone concerned should be entirely eliminated as this not only causes too much controversy, but the question is usually brought up whether the small dealer will still remain in business at the end of the year and be in a position to reimburse this rebate * * *.

"On the 'open price system', when the association voted to increase the prices the large manufacturers had sufficient merchandise on hand and were in a position to fill many orders at the low prices, whereas the small manufacturer was out of luck * * *."

MARKING DEVICES INDUSTRY, CODE NO. 59

Various companies speak of a standard price list to be issued by the code authority.

Letter of March 23:

"The Code of the Rubber Stamp Manufacturers has not as yet provided a price basis. We filed with our code authority our price list, but this was the same that had been in effect for over a year, and there has been no change to date. We have expected daily to have a new price list, but this has not been received."

Letter of March 5, 1934:

"* * * I am sorry that I cannot answer any of the five points enumerated in your circular owing to the fact that our price schedules filed some 2 or 3 months have not yet been adopted by our code authority.

"* * * We expect our code authority to act on a standardized list covering the entire country in a very short time, and if at some future time you still desire the information requested in your circular, we shall be pleased to answer these various points in the best of our ability."

Letter of March 5:

"* * * Our code was signed as above stated (Oct. 20, 1933), but as yet the International Stamp Manufacturers Association has not agreed to any price list, and it seems we are all working under any price list we may see fit, which is indeed a very unfavorable condition.

"This firm has operated in the red for the past 5 years, and if there could only be a legitimate price list established and put into operation, no doubt we could come out from under and take a place with other industries who are working under the same system. We are informed by the International Stamp Manufacturers Association that a schedule of prices will soon be ready to put

into operation, and just as soon as this is handed to us we will endeavor to carry it out to the letter and will expect everyone else to do the same."

METAL WINDOW INDUSTRY, CODE NO. 205

Members of the industry filed discount sheets applicable to a sandard price list. From various letters it would appear that discounts are also standardized.

Letter dated March 12, 1934, metal-window manufacturer:

"* * * On February 6 we filed the discount sheet applicable to the price book published by the Metal Window Institute. Just prior to February 15 we revised our discounts in order to meet the apparent established price level.

"* * * The Metal Window Institute price book was compiled by the large eastern manufacturers, and naturally endeavors to confine the sale of metal windows to their standards only."

STEEL CASTING INDUSTRY, CODE NO. 82

Several companies refer to the schedule of prices set up by the Steel Founders Society.

Letter of March 9, founder and manufacturer:

"The price list which we filed on steel castings was the schedule prepared by the Steel Founders Society of America, titled 'A Study of the Schedules for Miscellaneous Castings Based on Levels of 1926', and dated December 1, 1933.

* * * * * * *

"Summing up, we will say that we were apprehensive of any proposed method of price fixing, either in the cast-iron industry or the cast-steel industry. However, we are, up to the present time, very well pleased with the manner in which the industries are functioning under the Steel Foundry Code. * * *"

Letter of March 28, manufacturer of steel castings:

"* * * No pressure has been brought to bear upon us in any respect. We believe this is due to the fact that we have tried to cooperate with the code authorities to the fullest possible extent. The legal provisions in the code seem to be ample to compel any lack of uniformity of action to a prescribed uniform course."

VITRIFIED CLAY SEWER PIPE MANUFACTURING INDUSTRY, CODE NO. 136

Letter of March 27, small manufacturer:

"We do not think that there has been any narrowing of the spread in prices filed as the prices filed were practically all arrived at by collusion before the first ones were filed and all prices now are arrived at the same way. * * *"

VALVE AND FITTINGS MANUFACTURING INDUSTRY, CODE NO. 153

One company reports a conference of manufacturers to bring about uniform prices.

Letter of March 2, manufacture of fittings:

"The only harm we see in the open-price system is that we cannot get all manufacturers on a uniform-price basis. There are some that claim to have an incomplete line and, therefore, must sell at a lower price. Under a fixed price these competitors would be brought in line with all other competitors.

"Last September our discount for fittings was adjusted to 75.5 percent but due to competition this was lowered last month. A conference was held with most of the manufacturers under the code and the discount was brought back to 76.5 percent, being within 4 percent of our earlier adjusting price. This was accomplished February 23.

* * * * * * *

"There has been no pressure brought on us by the code authority members because we realize that the price last established was a fair price and we are glad to cooperate with other manufacturers in this new schedule. We have heard from some other manufacturers under other codes where they have not been able to get together amicably on a fair price and where the spreads have been considerable."

COMPRESSED AIR INDUSTRY, CODE NO. 55

A correspondent reports a general consideration of a price increase by air-compressor manufacturers.

Letter of March 5:

"The various air-compressor manufacturers under 10 horsepower have talked of changing their prices but it has not been definitely settled."

RUBBER MANUFACTURING INDUSTRY, CODE NO. 156

One member of the rubber-glove subdivision writes that manufacturers have agreed on prices.

Letter dated March 23:

"The open-price system thus far has helped us in several ways. First, we had one manufacturer in our line who would undersell others regardless of quotations and in several cases we had to sell at cost or below in order to hold our accounts against this competition. This manufacturer finally consented to increase his prices on a level with the others. We are also helped because all manufacturers in our line raised the price of our products to a point where we were able to make a fair manufacturer's profit.

"The open-price system hurt us for 3 or 4 months, the latter part of 1933, because several of our competitors who agreed to raise prices evidently failed to do so with a result that many of our customers purchased elsewhere for this period.

"I was asked to submit my prices at several of the rubber manufacturers' meeting which I did and several of the members informed me that one of our items in particular, was too low and they felt that we should either discontinue the sale of it or increase the price. I agreed with them and immediately made arrangements to wind up all outstanding contracts on this number and to increase the price so as to be in line with our competitors."

A similar agreement seems to exist in the automobile fabric subdivision.

Letter dated March 1:

"Insofar as the operation on open-price provision is concerned in the 'automobile fabrics' subdivision, it has for several years past been the practice amongst the members of our division to agree upon a proper price level. This level has been reduced from time to time due to the chiselling tactics of members of the industry, superinduced by general economic conditions in the past several years, but there has been, within that time, more or less of a definite price-fixing arrangement. Therefore, in the same subdivision the filing of prices with the Rubber Manufacturers' Association has operated as it usually has in the past several years, which is that general price structure is maintained, although we have lost some of our customers because they have been able to buy at lower prices than those filed with the association, and undoubtedly there will be further chiselling as time goes on unless drastic steps are taken to apprehend the violators and to immediately fine them in accordance with the provisions of our code. Prior to our code there was an attempt to definitely maintain prices."

FOLDING PAPER BOX INDUSTRY, CODE NO. 193

One correspondent alludes to quota allowances, which would suggest form of agreement.

Letter dated March 24, carton manufacturer:

"* * * Consequently the open-price system has not hurt us, but the general competitive scramble since the codes were being formulated has resulted in our quota dropping from 23 percent to 9 percent. We believe that this was brought about by competitors trying to increase their portion of the business with a view to an increased quota allowance under the code. We have refrained from quoting under cost and as a consequence have lost, in the last 6 months, a good share of the business which normally and legitimately should have been ours."

Letter dated March 26:

"* * * It is our intention before filing our price lists with the code authority in Chicago to endeavor to have other folding-box manufacturers who are interested to agree to the prices in order to avoid confliction. In the matter of these whisky-bottle cartons we are, so far, unable to come to an agreement. The objections being that the prices are too low and that we should file prices for customers as they come up individually instead of selling

from a price list. If we cannot come to an agreement we will file our prices with the code authority headquarters.

"In regard to questionnaire no. 4: The folding-box manufacturers have had several conferences in regard to filing prices on various commodities, and although the prices are not yet agreed upon, the price spread between the lowest and highest has been very materially narrowed.

"We intend to hold a meeting of all the Pacific coast manufacturers within the next 2 weeks, and endeavor then to agree upon prices that are fair and honest and that will enable us to pay a decent wage and to pay a fair profit on whatever we buy * * *."

Appendix D. Evidence of the Change of Prices Under Open-Price Codes

Information which shows how prices have changed from those first filed is available for a considerable number of companies represented by more than one price list. We had hoped (1) to determine the history of prices before and after the open-price system by comparing these prices with those collected by the Bureau of Labor Statistics; (2) to determine the direction of price change under the open price system by comparing earlier and later lists.

The first project proved impossible when it was found that the prices collected by the Bureau of Labor Statistics are typically not comparable with those in the price lists. In only one case thus far have we found a Bureau of Labor Statistics quotation whose movement since the first filing was similar to the movement of the prices filed. A similar check was attempted with the McGill Index, likewise with unsatisfactory results. Many of the price changes shown in the study take the form of changes in discounts and terms of sale which evidently are not emphasized in the computation of a general index.

Without comparable records of price movements before the codes, the meaning of these price movements is difficult to determine. In some cases the rise may be a healthy recovery from an untenably low price. In some cases the fall may be a healthy recession from prices set unduly high in the first flush of enthusiasm about the code.

The chief significance of these records of price change is their bearing upon the belief that price uniformity has resulted from intense price competition. Such a development would be consistent with downward price changes, but scarcely with general price increases or with the absence of significant price revisions.

In three industries the majority of prices changed upward after the first filing. In four more industries, although a majority of the prices did not change, mose of the changes made were upward. (In four industries the majority of all prices, and in two more the majority of those which changed, moved downward.) All seven of the industries showed the predominance of upward movements.

III. Evidence Bearing upon the Changes of Prices Under Open-Price Systems

When more than one price list has been available for the same company, we have compared lists in order to find out whether prices rose or fell under the open-price system In 10 industries there were no revisions of original filings. Out of a total of 6,099 cases of quotations in which such comparison is possible, there were 1,668 cases in which prices moved up, 893 in which they moved down, and 3,538 in which there was no change.

Close analysis of these figures shows that the results differ greatly from industry to industry. The following table lists the industries for which this comparison has thus far been carried out:

Industries in which the majority of changes were upward

	Up	Down	No change
31. Lime:			
Group III, district 7 and 12	315	(1)	(1)
Group II, district 5A	106	14	22
58. Cap and closure	156	24	
81. Copper and brass mill products	704	113	160

[1] Code authority only reports lowest prices filed.

Industries in which the majority of changes were downward

	Up	Down	No change
78. Nottingham lace curtain	21	45	24
82. Steel casting (no tabulation possible)			
90. Funeral supply		528	16
99. Asphalt shingle and roofing	10	101	10
156. Rubber manufacturing—rubber footwear division		7	1

Industries in which the majority of tabulations showed no change

	Up	Down	No change
25. Oil burner	4	16	37
31. Lime (group I, district 243)	15	2	275
96. Buff and polishing wheel	20	2	330
107. Ladder manufacturing	99	28	266
108. Motor fire apparatus manufacturing	3	2	25
186. End grain strip wood block		11	22
222. Card clothing	215		2,150

The following is a list of the 10 industries for which the first filings remain in effect through February 15:

Industry:	*Code*
Gasoline-pump manufacturing	26
Plumbago crucible	63
Business furniture, storage equipment, and filing supply	88
Gear manufacturing	117
Precious jewelry producing—Scholastic Division	130
Pipe-nipple manufacturing	131
Concrete masonry	133
Machine tool and forging machinery	103
Refractories	168
Paper, stationery, and tablet manufacturing	190

The following industries are said to have experienced marked price increase prior to the first filing, and this should be considered in any interpretation of the above lists:

Industry:	*Code*
Oil burner	25
Steel casting	28
Asphalt shingle and roofing	99
Ladder manufacturing	107
Pipe-nipple manufacturing	131

The information from purchasing agents consists of discontinuous records, and hence is of limited usefulness as a guide to price changes. In 85 instances earlier bids for similar commodities are available. In these cases, comparable price quotations moved as follows:

In comparison with 1933 (prior to July 1), 148 cases were higher, 44 cases lower, 31 cases without change. In comparison with 1932, 199 cases higher, 44 cases lower, 34 cases without change. In comparison with 1931, 43 cases higher, 6 cases lower, and 1 case without change. In comparison with 1930, 10 cases higher, and 5 cases lower. In comparison with 1929, there were 5 cases lower.

General Statement for the Consumers' Advisory Board at the Price Hearing on January 9, 1935

(By Dexter M. Keezer, Consumers' Advisory Board)

The proposed policy on price fixing, announced by the National Industrial Recovery Board in calling for this hearing, seems to us to be pointed definitely in the right direction, though we think it too tender in its approach to the crucial problem to which it is addressed. If the National Recovery Adminis-

tration is to justify its name, in any large measure, we advise that the policy be strengthened in a manner which we will outline subsequently and put into effect immediately.

We realize that you will find no novelty in this attitude on the part of the Consumers' Advisory Board. It opposed large-scale experimentation with price fixing 18 months ago and has consistently advocated such a policy since. However, there is this important strength in the position of the Consumers' Advisory Board at this time. Its views on price fixing are now supported by a weight of experience which could not be available in the earlier months of the National Recovery Administration.

Initially, in arguing against the incorporation of price-fixing arrangements in the codes, except in a very limited number of cases and then under close public supervision, the Consumers' Advisory Board inevitably had to argue from the experience with such devices before the coming of the National Industrial Recovery Administration. This experience suggested forcibly that if price-control devices were generously employed and placed in private hands there would be neglect of President Roosevelt's warning that "If we now increase prices as fast and as far as we increase wages the whole project will bet set at naught"—a warning given when he signed the National Industrial Recovery Act.

Advice to act accordingly was set forth by the Consumers Advisory Board in directions to its staff advisers and in a comprehensive memorandum on "Suggestion for Code Revisions" which was submitted to the Administrator on February 19 of last year. Your attention is invited to those statements. Copies are submitted herewith. We will not detain you by summarizing them, since the proposed policy on price fixing suggests that since they were written the National Industry Recovery Board has come to recognize in a large part the validity of the arguments set forth.

At the time they were advanced, however, these arguments were dismissed for the most part as theoretical, and the Consumers Advisory Board was, in the nature of the case, unable to prove by experience that it was right. The experience remained for the future to unfold. The Board did, however, undertake to keep a check upon the results of the price-fixing arrangements embodied in many codes, and at a hearing on prices inaugurated precisely a year ago presented a large volume of evidence indicating that these provisions were definitely retarding recovery by making possible an increase in prices which was outstripping the increase in wages—evidence indicating that, in fact, the President's warning was not being heeded. As an important part of the record of experience with price-fixing provisions which this hearing is designed to generate we invite your attention to the price studies presented by the Consumers Advisory Board at the hearing a year ago.

Subsequently the responsibility for keeping a detailed and comprehensive record of the results of the price-fixing provisions in codes was concentrated in the Research and Planning Division of the National Recovery Administration. Consequently this Board is not prepared to present such a record of experience at this time. However, the large volume of evidence which has come to the attention of the Board in the performance of its advisory duties has been almost universally unfavorable to the price-fixing provisions in the codes. Representatives of the Board have prepared for this hearing summaries of part of this evidence which will be presented subsequently. In general, the evidence which necessarily varies from code to code and industry to industry, indicates that:

(1) Provisions in codes sanctioning the fixation of minimum prices frequently have been utilized to establish prices so high as to be obviously unfair to consumers.

(2) Code provisions designed to disseminate information about prices have been perverted to use as tools for arbitrary price fixing.

(3) Efforts to maintain fixed minimum prices have often led deeper into a quagmire of hopelessly complicated administrative regulations.

(4) Recent efforts of the National Recovery Administration to correct flagrant misuse of price-fixing powers granted to business groups by the codes have dealt with only a fraction of the problem presented.

(5) Price-fixing provisions have been increasingly ignored, thus creating a new type of bootlegger and presenting the Nation with another demoralizing example of large-scale contempt for law.

(6) Law-abiding agencies and persons respecting prices fixed under the codes have increasingly been the victims of economic discrimination.

(7) Numerous business groups initially favoring price fixing enthusiastically have come to recognize its futility.

(8) Price-fixing provisions improperly written into codes of fair competition have served to buttress unfair restraints upon price competition devised before the advent of the National Recovery Administration.

In the light of such a record it seems entirely clear to this Board that the provisions in the codes authorizing price fixing should be eliminated forthwith, and any reinstatements made contingent upon a showing of both necessity and desirability far clearer than that which has been submitted prior to the adoption of any one of these provisions. It seems equally clear that safeguards should be thrown about provisions for price reporting which will prevent their perversion for price-fixing purposes.

In mental attitude a step was taken in this direction several months ago when the then Administrator of the National Recovery Administration promulgated an office order (no. 228) which called for wide-spread elimination of price-fixing provisions in codes except in cases of emergency to be declared by the Administrator. However, very little has been done to put this order into effect. Prior to the issuance of the order of June 7 of last year approximately 430 codes which contained price provisions in conflict with it had been approved. Only about a dozen codes have been formally amended to bring them into conformity with the order.

Further, the experience since that time has indicated that the provision for resort to price fixing in emergencies, set forth in office order no. 228, was ill advised. A summary of that experience has been prepared for submission at this hearing by a representative of the Consumers Advisory Board.

In its proposal of a policy on price fixing the National Industrial Recovery Board states that it "recognizes the value of—emergency price provisions." A continued assumption that there is value in such provisions seems to us to encourage a continuation of the unfortunate experience with emergency price fixing. It invites efforts to convert "the usual case" in which the National Industrial Recovery Board proposes to bar price fixing into an "emergency." And price fixing per se has been demonstrated to have no capacity to administer effectively to industrial emergencies.

The prompt implementing of the price policy proposed by the National Industrial Recovery Board in projecting this hearing would presumably eliminate price-fixing provisions from all but a small handful of codes to be administered, in the matter of price fixing, by public officials.

It does not follow, however, that this salutary step would eliminate price fixing in all industries whose codes are so modified. There was private price fixing in numerous industries before the advent of National Recovery Administration, and by maintaining industry prices at arbitrarily high levels such price fixing did much to intensify the depression. There is no reason to believe that the proposed policy on price fixing will eliminate it particularly since the National Recovery Administration has served to bring many business groups into closer communion.

Therefore if the National Recovery Board is to obtain its objectives in any large measure it must make a more trenchant attack upon price fixing than that outlined in the proposed policy. It may be argued that if the National Industrial Recovery Board eliminates those provisions in the codes which directly thwart price competition it will have done all that comes within its jurisdiction. Insofar as a legal question is involved, the Consumers' Advisory Board defers to those expert in such matters. But as an economic proposition it calls attention to the fact that every National Recovery Administration code is officially designated as a "code of fair competition" and as such cannot properly apply to an industry which has eliminated price competition by private agreements or attained a position where prices are fixed on a monopolistic basis. To validate its code of fair competition steps must be instituted by the National Industrial Recovery Board to strike down such price control in industries operating under codes. A representative of the Consumers' Advisory Board will present a more detailed statement on this subject.

In a price policy designed to revitalize the concept of fair competition, which basically underlies the Recovery Act, quality standards and labeling seem to the Consumers' Advisory Board to have a very important place, which is not recognized in the policy on price fixing proposed by the National Industrial Recovery Board. In some cases quality standards have been incorporated in

codes as essential elements in schemes of production control and price fixing. In others the absence of adequate quality standards has contributed its bit to the breakdown of the price-fixing schedules. But it does not follow that quality standards and price fixing go hand in hand. On the contrary, quality standards properly safeguarded and more particularly accurate grade labels have great potentialities to promote and protect fair price competition. A representative of the Consumers' Advisory Board will present to you a further statement on this subject.

In urging the National Recovery Administration to abandon price fixing in favor of a policy of fair competition the Consumers Advisory Board is guided not only by the demonstrated effects of price fixing in specific cases but by its relation to a workable scheme of national economic recovery as a whole. The obvious purpose of virtually all price-fixing provisions is to raise prices. When such provisions fail to do this they fail to serve the purposes of their sponsors. Even when not realized, however, the legally validated intention to raise the prices of products governed by National Recovery Administration codes presents a serious threat to economic recovery. This is indicated by a study of relationships between prices and the capacity to pay them, as set forth in charts prepared by the Consumers Advisory Board. An explanation of the charts is embodied in a separate statement to be submitted by a representative of the Board.

In general the charts, as well as other studies of the relationship of prices to capacity to pay them, indicate that since the inauguration of National Recovery Administration any increase in money earnings per industrial worker has been more than offset by the increase in the cost of living. They indicate further that increased prices have vitiated in substantial part the increase in money income of the Nation as a whole. Under such circumstances it is clear that a policy which validates the purpose to raise prices works directly against national recovery as truly measured in terms of employment and production.

Experience with the Open-Price Provisions of Approved Codes by Members of the Staff of the Consumers' Advisory Board

Corwin D. Edwards, Enid Baird, James E. Gates, Clayton Gehman, E. R. Lerner, L. B. Lovell, and Henry Rhine.

Assisted by Alma L. Shevlin, William A. Doran, Caroline Blanks, Mrs. A. T. Fowler, James D. O'Neal, and John F. Valts.

SUMMARIZED RECOMMENDATIONS

1. Open-price systems should be revised to eliminate abuses, but not abolished without further experiment.
2. All price information distributed should be available simultaneously and equally to all members of the industry, customers, and the Government.
3. In regulating price filing, code authorities should not be permitted to exceed the powers given by their codes over terms of sale.
4. Prices should be filed with a confidential agency obligated not to identify individual concerns in distributing the information.
5. Waiting periods should be retained, if at all, only where the foregoing safeguards operate.
6. Proof of collusion or coercion promoted by an open-price system should automatically suspend the system.

1. THE SCOPE OF THE STUDY

The charges against open-price systems, as a result of which this study was ordered, have been as follows:

1. The open-price system is used to identify enterprises charging low prices and thus make possible their coercion.
2. The open-price system is used to aid in the establishment of collusive price agreements.
3. The open-price system is used to facilitate price increases greater and more rapid than are in accord with the spirit of the act.

The chief purpose of this study has been to test the truth of the foregoing charges. A second purpose has been to discover to what extent open-price

systems have accomplished their legitimate and avowed purposes of preventing discriminatory prices and providing general price information.

To this end information about open-price systems was sought from: (*a*) Substantially all the code authorities administering open-price systems whose codes were approved before January 31, 1934; (*b*) a sample of enterprise in each open price industry; (*c*) Federal, State, municipal, and industrial purchasing agents; (*d*) a sample of private customers of open-price industries. (Details as to the number of inquiries and replies, the forms used, and the methods of sampling are contained in appendix A.)

In a considerable number of industries the information is sufficient for a judgment both about the first two charges, those of coercion and collusion, and about the degree to which the legitimate purpose of open prices have been accomplished. In certain other industries the facts are too scant to permit any judgment. For lack of comparable information about pre-code prices, the material bearing upon the third charge is inconclusive.

The outstanding conclusion which emerges from the study is that the effects of open-price systems differ according to the circumstances in which they are operated, the methods of administration, the nature of the code authority, the nature of the product, the nature of the market, and the other price provisions of the code. These differences are important. In one industry open prices have facilitated collusive price fixing; in another competitive price cutting. In one industry they have increased the marketing difficulties of small enterprises; in another they have encouraged small producers to invade new markets.

To describe these differences we have prepared preliminary reports, now being checked and extended, upon 25 open-price industries; and we intend to prepare similar reports upon perhaps twenty more industries. Each report will be made available as soon as it is complete.

This preliminary report deals with aspects of open-price systems which appear to be both generally characteristic of such systems and significant for determination of government policy. However, we wish to emphasize the fact that particular open-price codes may be exceptions, even to the most general of these statements, and that any policy determined upon the basis of a general report should be flexible enough to allow for such exceptions.

II. THE PREVALENCE OF COERCION

An important group of the replies to the Consumers' Advisory Board's questionnaires state that in various open-price industries pressure is exerted, either by code authorities or by large competitors, upon enterprises which quote low prices. Neither the private nor the public customers of open-price industries could be expected to know much about such activity; and code authorities, although in a position to know, could not be expected to report without hesitancy their own activities of this kind. Hence information about coercion has come almost entirely from members of open-price industries. Since inquiries were sent only to a selected sample, and since there are indications that some enterprises hesitate to become identified as complainants against code authorities, there is no reason to believe that all cases of actual or attempted coercion have been discovered.

Cases of pressure agains low-price enterprises have been reported to us from 29 of the 56 industries whose replies have thus far been tabulated. In nine of these industries more than one case was reported. Some reports are detailed and circumstantial and some are accompanied by documentary evidence. Others merely make the general statement that pressure has been exerted.

The industries are as follows:

Code no.	Industry	Number of cases
4	Electrical	4
26	Gasoline pump manufacturing	1
55	Compressed air	1
57	Pump manufacturing	2
58	Cap and closure	1
59	Marking devices	1
62	Steel tubular and firebox boiler	1
63	Plumbago crucible	1
66	Motor bus	1
77	Crown manufacturing	1
81	Copper and brass mill products	1
88	Business furniture storage equipment and filing supply	3
90	Funeral supply	3
98	Fire-extinguishing appliance manufacturing	3
99	Asphalt shingle and roofing	1
107	Ladder manufacturing	3
106	Motor fire apparatus manufacturing	2
109	Crushed stone, sand and gravel, and slag	1
120	Paper and pulp (cardboard manufacturers division)	1
125	Structural clay products	1
136	Vitrified clay sewer-pipe manufacturing	1
137	Warm air furnace manufacturing	1
149	Machined waste manufacturing	2
156	Rubber manufacturing	4
176	Paper distributing trade	1
186	End grain strip wood block	1
187	Cotton cloth glove manufacturing	1
205	Metal window	1
236	Cooking and heating appliance manufacturing	1

The form and intensity of this pressure differ appreciably from case to case. In some cases the code authority exerts the pressure; in some cases individual members of the code authority; and in some cases private members of the industry. In some instances producers are threatened either with legal harassment or with special attack by business competitors. In other instances the argument is used that price cuts by competitors will deprive the low-price concern of any advantage. Again, the advantages of price collusion and price stability are emphasized and an appeal is made to trade loyalty.

A complete report of the cases is attached as appendix B. The following instances, all from codes which grant the code authority no power to fix prices, are sufficient to illustrate the different kinds and degrees of pressure.

Paper and Pulp Industry (Cardboard Manufacturers' Division)

Letter recently sent out by the secretary of a code authority:

"Your filed prices were roughly 10 percent less than those filed by your competitors. In view of their experience in the manufacturing of a similar grade, they feel it doubtful that you could justify such prices. Consequently, I feel sure that you will want to revise your prices so that they will bear a closer relation to those of your competitors. They pointed out that in the event you found yourselves unable to cooperate, it was the opinion of some of the members that they might have to resort to procedure provided * * * by the code. Under this provision a member may complain to the code authority in regard to your price schedule. This will lead to an investigation to ascertain whether this price can be justified * * * such procedure is, of course, unpleasant and costly. I am sure this matter can be straightened out without resorting to any such action.

"It was pointed out that in the event the investigation proved that this price schedule could be justified on the basis of your own cost, that the members would then be forced to meet your price. This would then destroy your existing competitive advantage and merely serve to lower the existing price structure, to no avail."

Marking devices industry

The following is from a photostatic copy of a letter received by a manufacturer from his trade association:

"We understand that you are sending out cards quoting 35 cents for five-line endorsement stamps with borders. This does not meet with the prices agreed upon by the manufacturers in accordance with the International Stamp Manufacturers' Association and our adopted code. In view of the above, we

expect a reply from you by return mail as to what action you will take in the matter. If we do not hear from you, it will be necessary for the writer to hand this matter over to the executive committee for immediate action."

In a letter of March 5 the manufacturer himself writes:

"Our code was signed as stated above, but as yet the International Stamp Manufacturers' Association has not agreed on a price list, and it seems that we are all working under any price list we may see fit, which is, indeed, a very unfavorable condition.

"We are informed by the International Stamp Manufacturers' Association that a schedule of prices will soon be ready to be put into operation, and just as soon as this is handed to us we will endeavor to carry it out to the letter and will expect everyone else to do the same."

Cast iron soil pipe industry

Letter of March 30, 1934, a manufacturer states:

"Mr. ———, a member of the code authority, told me at the meeting held in Cleveland some time ago that he was not threatening us, but if we did not straighten out our price situation in Kansas City, it was quite possible that he would open a soil-pipe factory in this district.

"Mr. ——— asked us in Washington to bring our price up to his level, as he thought we would still get a substantial amount of the local business in this district."

Letter of April 3, the same manufacturer states:

"The southern members of the Soil Pipe Association are endeavoring to get manufacturers in other districts to agree to allocation, but they have been turned down. Allocation would mean an immediate advance in price, and the price is already plenty high, if not too high."

Business-furniture, storage-equipment, and filing-supply industry

Letter of February 28, a manufacturer states:

In the matter of the Business Office Furniture Code, the price of $24.25 was fixed by a price committee. We had no part in the formulation of this price.

"Thereafter we were approached by several of the code committee and other members of the industry, with the argument that unless we published prices in line with the $24.25 price which they had fixed, they would meet whatever price we fixed.

"We were definitely advised that all members of the industry had agreed on the price of $24.25.

"As a matter of fact, in Philadelphia, a member of the code committee and a competitor, very generously told us that we were going to Atlanta because we were violating the code in the matter of prices, etc."

Funeral supply industry

A letter from a member of the industry states:

"We have had several telephone calls and telegrams, not only from the code authority, but from competitors, asking that we withdraw our filed price changes because it is necessary to notify all our competitors of such changes and they would meet us and we would not get any more sales."

Another letter from a manufacturer and jobber in the funeral supply industry dated March 14 states:

"We have in our files a letter from the code authority objecting to some of our prices on account of their being lower than one or two of our competitors."

And still another letter from the same industry dated March 21 states:

"We think a determined effort has been made to establish a uniform price for standard caskets all over the eastern United States, that is, broadly speaking, east of the Rockies, but without much thought to varying conditions existing among manufacturers. This has been done by meetings, visit of agents and letters from headquarters."

Electrical industry

Letter of March 2 from a manufacturer states:

"There has been mild pressure brought to bear upon us to have us set our prices at the same level as prices of competitors. It has been emphasized to us that if we establish lower prices than competitors, our competitors would merely revise their prices and a price war would ensue."

Crown manufacturing industry

A letter of March 9 from a manufacturer of a particular accessory states:

"A meeting of all the manufacturers was held in December 1933. I personally attended this meeting, representing ——— company, and at the meeting various phases of the code were gone into and discussed by the members and after several explanatory remarks had been made, there arose the question as to what the manufacturers were going to do about new prices. It was first decided that all members should file their new prices to become effective January 2, 1934.

"I stated that I was not in favor of this increase, as I felt it to be in excess of the actual cost of the industry under the National Recovery Administration.

"Part of the argument placed before me was the fact that the customers were expecting an increased price, and they might as well get it at once rather than try and build it up over a period of time."

Pump-manufacturing industry

Letter of March 2, from a manufacturer using iron, states:

"The form of the pump code itself operates to exert pressure to raise prices. The pump manufacturers have been informed that it is desirable to get their prices in line by copying each other's prices, although admonished that it would be illegal to agree to do so."

III. THE PREVALENCE OF COLLUSIVE PRICE FIXING

The evidence at hand suggests that collusive price fixing is attempted in a substantial number of open-price industries. This evidence is of two kinds: (1) Direct statements by members of open-price industries and code authorities; and (2) peculiar uniformity of prices under conditions which should not be expected to produce uniformity if competition were free.

The existence of pressure to persuade low-price enterprises to readust their prices is in itself evidence of attempted price collusion. Hence collusive activity is indicated in the 29 industries from which cases of such pressure have been reported. In addition, the replies to the questionnaire indicate collusion in eight industries from which no cases of coercion have been reported. (The nature of the evidence is described in appendix C.) The industries in question are:

Code No. 56. Heat exchange.
Code No. 73. Hair and jute felt.
Code No. 82. Steel casting.
Code No. 96. Buff and polishing wheel.
Code No. 102. Shovel, dragline, and crane.
Code No. 131. Pipe-nipple manufacturing.
Code No. 153. Valve and fittings manufacturing.
Code No. 171. Rolling steel door.

There is record of collusion, therefore, in 37 industries. Of the 21 others which we have surveyed, without finding such evidence, 1 operates under a code which permits price fixing, and 8 prices, and 2 in which the products of various producers differ considerably in character.

The evidence of price identity comes from two sources, the records of public, chiefly Federal, purchasing agents, and the comparison of price lists submitted by code authorities and members of open-price industries.

The information supplied by the public purchasing agents consists of records of the filing of identical bids upon commodities they sought to buy and of records of previous comparable bids in the case of some of these commodities. Necessarily, this information is limited to the kinds of products bought by Government agencies under contracts let since last July. It is further limited by the fact that some Government offices keep their records of bids in a form which does not permit later comparison.

We have considered a bid identical in cases in which half or more than half the bidders submitted bids which were exactly the same. We have disregarded similar bids, even when the price variation was only a few cents. We have also disregarded all cases in which fewer than half the bidders submitted identical bids.

Using this standard, we have records of identical bids to public purchasing agents upon 432 commodities. Of these only 11 come under codes, such as

lumber and bituminous coal, in which price lists are published by the code authority and price quotations presumably must be identical. Twenty of the commodities are governed by codes without open-price systems and 31 by codes which at the time the information was collected were not yet approved. The remaining 380 commodities were in open-price codes. In other words, 85 percent of the total number of commodities covered are in open-price codes, although when the information was collected only about 50 percent of all approved codes had open-price clauses.

All 380 of these commodities are concentrated in 46 of the 141 codes which had been approved with open-price clauses before February 24. The absence of evidence of identical prices in the other open-price codes may be due to actual variation in these prices, inadequacy of our sample, or failure of public purchasing agents to buy the commodities governed by these other codes. In the case of the 6 codes, we believe that there is a distinct evidence that the open-price systems have tended to facilitate establishments of identical prices. Six codes in the list are among those under which there have been reports of coercion or collusion.

The combination of open-price systems with other arrangements affecting prices seems peculiarly likely to produce price uniformity. In the 46 open-price codes just mentioned significant price provisions appear in various combinations. Their total number is shown below:

Provision:	*Number of codes*
Waiting periods	39
Delivered prices	21
Fixation of discounts, terms of sale, or classification of customers	25
Resale price maintenance	15
Cost clauses involving average or representative cost, or some fixed element in cost	9
Other forms of partial price fixing (e. g. fixation of quality extras)	9

A similar survey of 21 open-price codes under which the material from code authorities and producers indicates that prices are uniform shows a similar prevalence of arrangements affecting prices. Only 4 of the 21 codes contain no price provision except open prices with a waiting period. In various combinations other price provisions appear with a frequency shown in the following table:

Provision:	*Number of codes*
Waiting period	19
Delivered prices	6
Fixation of discounts, terms of sale, or classification of customers	15
Resale price maintenance	3
Cost clauses involving average or representative cost, or some fixed element in cost	2
Other forms of partial price fixing	3

The degree of identity in prices shown by the commodities covered in this part of the study is very great. The 432 commodities were included in bids on 160 contracts. On 94 of these contracts (58 percent) every bid was identical. On the other contracts one or two bids differed from the others, being sometimes lower and sometimes higher. Of the total number of bidders (1,396), 91 percent submitted bids at identical prices. In many cases the bids were submitted upon lists of several items, the largest number of items included in any one bid being 23. Thus, one instance of identical bidding may represent a case in which the bidders submitted identical bids upon a series of items and arrived at the same total price for the entire assortment. Many of the cases in which the bid is not called identical are cases in which the bidder diverged on only one or two items out of a long list, but submitted identical prices upon the rest of the list.

A comparison of these bids with bids previous to the National Recovery Administration shows that much of this uniformity did not formerly exist. We are able to make a direct comparison in the case of 85 out of the 160 contracts. Fourteen of these cases showed all bids identical before the National Recovery Administration and 16 showed half or more than half identical at that time. In this group all the bids remained half or more than half identical under the National Recovery Administration. Fifty-five showed less than half the bids identical before the National Recovery Administration, and 39 showed, at that time, no identity whatsoever. Every one of these cases

showed more than half the bids identical after the National Recovery Administration, and in 31 cases all the bids were identical.

The prices collected from code authorities and members of open-price industries likewise show a remarkable degree of identity. Among the reports from the 24 industries which have been separately studied there is a wide variation in the number of price lists submitted and in the comparability of these lists. Hence, the study of price identity has necessarily varied from industry to industry in conclusiveness.

In the first two columns after the name of each industry, the following table shows the number of companies submitting price lists and the number of products sufficiently comparable at the first filing that their prices can be compared. Since not all products are included in each price list, comparisons are possible for varying numbers of companies upon various items. The range in the number of companies compared is shown in the third column. The next three columns show the number of cases in which all prices upon a product were identical. The number in which half or more of the prices were identical, and the number of cases in which no identical prices were filed upon a product. The rest of the table gives the same information for the latest price lists available. As in the case of information upon public bids, we have ignored similarity of prices, even when the price difference has been very small. We have also eliminated cases in which vagueness or variation in the terms of sale has made impossible the computation of accurately comparable prices. In cases in which an industry is divided into several separate markets, the results for each market have been separately recorded.

The fourth and fifth columns of the table indicate by comparison with the second column the degree to which substantial price identity existed in the industry at the first filing.

The ninth and tenth columns, compared with the second, show the degree of identity in the latest available prices.

The sixth and eleventh columns indicate whether any appreciable group of nonidentical prices is to be found.

(The table above referred to has been filed with the committee.)

At the first filing, 17 of these 24 industries showed either absolute identity or substantial identity of price upon the majority of their products, and 5 others showed absolute identical prices for some products. By the latest available lists, 3 of these 5 industries had brought the prices of the majority of their products to absolute identity, and one other showed a good many cases of identity.

In recent discussions of price uniformity under open-price systems the view has been rather widely advanced that identical prices are to be expected as a result of the keenness of open-price competition—that buyers are so anxious to buy at low prices that a producer must meet the lowest filed price to avoid suffering excessive sales resistance.

The atmosphere in which these price adjustments took place in some 30 or 40 industries, as evidenced by the cases of coercion and collusion and the kind of comment cited earlier in this report, do not suggest that intense competition prevails in these industries. In certain industries in which the comments indicate that competition is intense, identity of price is less prevalent. Moreover, the nature of the price movements in industries with substantial price identity seems to be inconsistent with the existence of keen price competition in seven respects.

(1) In certain industries and upon certain products of many industries, prices have not been made identical by open quotations. Among these industries is end grain strip wood block manufacturing, an industry which seems to be characterized by keen competition in a buyers' market—the very condition expected to produce the price identity.

(2) The identity appeared too early to have been produced by open-price filing. In a competitive adjustment one should expect prices to be in initially divergent and to approach a common level by revision. Actually more than two-thirds of these industries filed upon a majority of their products prices which, at the first filing, were either all identical or mostly identical. Such a result can be explained only by collusion, by the operation of an open-price system for a considerable period before its approval in the code, or by such general access to price information that an open-price system is superfluous.

(3) The industries in which price identity is conspicuous are approximately the ones in which there is other evidence of price fixing. Of 21 industries

in which the special studies show conspicuous price identity, 17 have given direct evidence of collusion and coercion.

(4) Since price information has not been readily available to buyers under some of these open-price codes, the necessity for enhanced price competition has not been present. Thirteen code authorities administering codes under which prices are conspicuously identical apparently do not make prices available to customers of their industries. In 2 other codes customers have access to filed prices only by inspection at the code authority offices, and in 5 other codes only by the publication of individual price lists by the members of the industry.

(5) The point at which prices are identical is often not that at which competition might produce identity. In price competition identity should usually appear by adjustment of prices to the lowest price filed. When some prices diverge and there is only partial identity, it becomes possible to determine whether the identical prices are at the low, the high, or an intermediate quotation. The following table, which includes all cases in which such a comparison is possible, indicates that in every comparable competitive group, except one part of the lime industry and one part of the refractories industry, there are identical prices higher than the lowest prices. In 16 cases more than half the points of identity are above the low prices. It would be remarkable if competition brought prices down toward the lowest price by a series of adjustments after each of which those above the low price had chosen an identical stopping point.

Location of identical price—both filings

Code industry	Number of cases in which identical price is highest price	Number of cases in which identical price is above lowest price	Number of cases in which identical price is lowest price
25. Oil burner	0	5	2
26. Gasoline pump manufacturing	0	1	11
31. Lime:			
I. District 2 and 3	13	3	10
III. District 7 and 12	0	0	11
IV. District 15	1	0	4
63. Plumbago crucible	18	22	2
78. Nottingham lace curtain	20	89	24
81. Copper- and brass-mill products	1	3	9
82. Steel casting	11	7	10
88. Business furniture, etc.: I. Furniture	6	2	12
90. Funeral supply	23	23	18
96. Buff and polishing wheel	274	0	0
99. Asphalt shingle and roofing: II. West	8	0	3
103. Machine tool and forging machinery	6	6	4
107. Ladder manufacturing	14	3	23
108. Motor fire apparatus manufacturing:			
I. Large companies	12	0	10
II. Small companies	0	4	1
117. Gear manufacturing	4	0	52
131. Pipe nipple manufacturing	8	0	2
156. Rubber manufacturing—footwear	4	47	22
168. Refractories:			
I	0	2	0
II	0	0	2
IV	2	2	2
VI	0	2	2
2 Card clothing	215	0	0

(6) In 3 industries out of 5 in which the direction of price change can be traced, it is not of the kind which might be expected during keen price competition. Revisions of prices based upon competition should be made by high price enterprises downward toward the lowest price unless the volume of sales at existing prices is already satisfactory—a condition not yet frequent. An adjustment of this kind is presumed in the argument that price competition has forced identical prices. On the contrary, price revisions based upon collusion or coercion should usually be upward by those with the lowest prices.

In five of the industries examined price information is available for two points of time and identical prices were on file at the second date. The following table shows which part of the prices moved into conformity with the rest. Instances in which all quotations on an item moved up or down are not included.

	Number of cases in which lower price moved up	Number of cases in which higher price moved down	Number of cases in which some prices moved up and some down
Copper and brass mill product	3	0	10
Steel casting	1	17	0
Lime	23	(1)	0
Card clothing	215	0	0
Buff and polishing wheel	274	0	0

[1] Code authority only reports lowest prices filed.

(7) The competitive relationship of the commodities studied is frequently not of a kind which might be expected to produce price identity. Automobiles illustrate nicely the fact that, when prices are open, competitive commodities which are now identical in kind and in conditions of sale do not need to be identical in price. Among the industries covered by our study, the machine tool and forging machinery industry illustrates the same point. Among the commodities covered by these studies are products as little standardized as business furniture, funeral supplies, gasoline pumps, ladders, lace curtains, stationery, and rubber footwear. Presumably the concerns selling these commodities have built up good-will; that is, a preference by certain customers for their services. The characteristics which organized commodity exchanges have found necessary to establish a single price in the market—grading by an impartial agency; standard terms of sale, credit, and deliver; concentration of trading at certain points in a room; immediate publication of all transactions—do not prevail in these markets. Price uniformity in spite of goodwill varying products, and varying conditions of sale cannot be readily regarded as competitive.

In summary—the study has produced some indication that prices are collusive in 69 industries. In 26 of these the evidence takes the form both of uniform prices not explicable as the result of competition and of direct charges of collusion, coercion, or both. In 10 cases the charges of collusion are not accompanied by supporting evidence of identical prices. In 33 cases the uniform prices are unaccompanied by supporting charges of collusion.

The following table summarizes the nature of the evidence about each code:

Evidence of collusion[1]

Code no.	Industry	Identity of bids on contract	Identity of prices in price lists	Evidence of pressure to maintain prices	Evidence of collusion other than pressure [1]
4	Electrical	Yes		Yes	
11	Iron and steel	Yes			
18	Cast-iron soil pipe	Yes		Yes	
26	Gasoline pump manufacturing		Yes	Yes	
31	Lime	Yes	Yes		
39	Farm equipment	Yes			
43	Ice	Yes			
55	Compressed air	Yes		Yes	
56	Heat exchange	Yes			Yes.
57	Pump manufacturing			Yes	
58	Cap and closure		Yes	Yes	
59	Marking devices			Yes	
62	Steel tubular and fire-box boiler	Yes		Yes	
63	Plumbago crucible	Yes	Yes	Yes	
66	Motor bus			Yes	
68	Road machinery manufacturing	Yes			
73	Hair and jute felt				Yes.
77	Crown manufacturing			Yes	
78	Nottingham lace curtain		Yes		
80	Asbestos	Yes			
81	Copper and brass mill products	Yes	Yes	Yes	
82	Steel casting	Yes	Yes		Yes.
84	Fabricated metal products manufacturing and metal finishing and metal coating.	Yes			
88	Business furniture, etc	Yes	Yes	Yes.	
90	Funeral supply		Yes	Yes.	

[1] No attempt has been made to include additional evidence of collusion where there is evidence of pressure.

Evidence of collusion—Continued.

Code no.	Industry	Identity of bids on contract	Identity of prices in price lists	Evidence of pressure to maintain prices	Evidence of collusion other than pressure
96	Polishing wheel (buff)		Yes.		
98	Fire extinguishing appliance manufacturing		Yes	Yes.	
102	Shovel, dragline, and crane				Yes.
103	Machine tool and forging machine	Yes.			
107	Ladder manufacturing		Yes	Yes.	
108	Motor fire apparatus manufacturing		Yes	Yes.	
109	Crushed stone, sand, and gravel and slag	Yes		Yes.	
114	Scientific apparatus	Yes.			
117	Gear manufacturing		Yes.		
120	Paper and pulp (cardboard division)	Yes		Yes.	
123	Structural clay products	Yes		Yes.	
127	Reinforcing materials fabricating	Yes.			
129	Cement	Yes.			
130	Precious jewelry products, scholastic division		Yes.		
131	Pipe nipple manufacturing	Yes	Yes.		
133	Concrete masonry		Yes.		
134	Gas appliances and appurtenances	Yes.			
136	Vitrified clay sewer pipe manufacturing	Yes		Yes	
143	Pyrotechnic Manufacturing	Yes			
153	Valve and Fitings manufacturing	Yes			Yes.
156	Rubber manufacturing	Yes		Yes	
158	Stone-finishing machinery and equipment	Yes			
168	Refractories	Yes	Yes		
171	Rolling steel door				Yes.
174	Rubber tire manufacturing	Yes			Yes.
175	Medium and low-price jewelry	Yes			
176	Paper distributing trade	Yes		Yes	
186	End grain strip wood block			Yes	
187	Cotton cloth glove manufacturing	Yes		Yes	
190	Paper stationery and tablet manufacturing		Yes		
193	Folding paper box	Yes			
199	Cork	Yes			
204	Plumbing fixtures	Yes			
205	Metal window			Yes	
220	Envelope	Yes			
222	Card clothing		Yes		
230	Paper bag manufacturing	Yes			
236	Cooking and heating appliance manufacturing			Yes	
245	Corrugated and solid fiber shipping container	Yes			
249	Tag	Yes			
258	Cast-iron boiler and cast-iron radiator	Yes			
263	Machine knife and allied steel products manufacturing.	Yes			
275	Chemical manufacturing	Yes			

Fragmentary as this material is, it suggests that collusive and coercive activity are common under certain National Recovery Administration codes which contain open prices.

IV. Price Change Under Open-Price Systems

The available information has not been sufficient to determine whether open-price systems have been associated with excessive price increases. The available information on price changes is summarized in appendix D.

V. The Relation of Open-Price Filing to Coercion and Collusion

Although open prices are markedly associated with coercive and collusive activity and with identical prices, the study does not indicate that open-price systems must necessarily produce such results nor that only open-price systems can do so. Complaints received by the National Recovery Administration have cited cases of coercion and collusion in industries without open-price systems; and this study has indicated not only by absence of complaint but by evidence of intense price competition that in certain open-price industries collusive and coercive activities are not prevalent. Open-price systems fixing, nor can collusive pricing be completely abolished by abolishing open-price systems.[1]

[1] The question whether open-price systems involve an increased probability of price fixing cannot be statistically answered.

The materials for such an answer are not available and cannot readily be collected. Except in open-price industries, no adequate price information is officially in the possession of the code authorities; and our study has indicated that the Government's present price information is not suited to this kind of investigation. In the absence of price information, the only available statistical procedures would be to compare the volume of complaint from open-price industries with that from industries without open prices—a procedure whose weakness would lie in the fact that replies from small and scattered groups of enterprises are not likely to be equally representative of their industries; or to compare the volume of complaint in given industries before open-price systems were approved with the volume in these same industries after such systems were approved—a procedure which is likewise weak, because some open-price systems were unofficially in operation while the code was pending, and others were in abeyance after their official start.

Moreover, if it were found that open-price systems accompany collusion and coercion with peculiar frequency, it would not yet be clear whether open-price systems usually produce price-fixing or, instead, those who intend to fix prices usually seek open-price systems as aids in the process. If the former, the open-price procedure would be the origin of the trouble; if the latter, it would be a facilitating agent whose removal might decrease but would not be sufficient to destroy price-fixing activity.

It is evident that price-fixing depends upon many other considerations in addition to the openness of prices. Among the significant code provisions are cost clauses (available as a cloak for suggested prices and as a means of harassing dissenters), delivered price clauses (available to prevent geographical competition), and clauses classifying customers and determining discounts (available as means of simplifying the price structure to the point where agreement and discipline become possible).

Among the significant industrial circumstances are the degree to which a few large enterprises overshadow the rest, the degree to which dissimilarity of products has weakened price competition, the form of the code authority (whether a new committee, an established trade association, or a hired firm of management engineers), the past experience of the industry with collusive price fixing, the availability of substitute products, the sensitiveness of demand to price changes, and the sentiment of members of the industry. When some combination of these factors is sufficiently unfavorable to collusion, it appears that price fixing either is not undertaken or speedily breaks down.

The wide-spread collusion found in this study apparently expressed the fact that in many industries business men desire price fixing and find it feasible. The letters from producers who commend open-price systems speak mostly of such benefits as elimination of price shopping and stabilization of the market price. For example, a member of the refractories industry reports that the open-price plan has stopped price cutting and that prices are more uniform because some manufacturers have "brought their prices up to the established market price." A member of the pipe nipple manufacturing industry reports a decided increase of price uniformity, but notes that "one recalcitrant is refusing to abide by the standard list prices which were and have been in general use by all members of this industry since September 1, 1933." A member of the shovel, dragline, and crane industry expresses his satisfaction with open prices, and continues, "No one, so far as I know, has exercised the privilege of reducing prices under the 10-day clause in our code. The moment that starts we go right back into the old stupid practice of price cutting."

The most frequent criticism offered by producers who dislike open-price systems is that open prices lead to price cutting. The comment from industries in which open-price systems have conspicuously failed to establish business control over prices is directed toward the need for merchandising plans and other more formal instruments of price control. For example, a member of the valve and fittings industry writes, "The only harm we see in the open-price system is that we cannot get all manufacturers on a uniform price basis. There are some that claim to have an incomplete line and therefore must sell at a lower price. Under a fixed price these competitors could be brought in line with all other competitors." The secretary of the porcelain breakfast furniture industry expresses regret that the industry's open-price plan is a disastrous substitute for one which had been operating in the industry, under which filed prices were required under penalty of a fine to cover raw material, freight, wrapping materials, 66⅔ percent for labor and overhead, and 6 percent profit. The Code Authority for the Marking Devices Industry has not

put its open-price plan into effect and is now preparing amendments to the code and minimum-price schedules because it feels additional price control is required. The Code Authority for the Oil Burner Industry declares the open-price plan does not regulate the price structure and should be replaced by a price formula. The Code Authority for the Cork Industry has postponed operation of its open-price plan until a merchandising plan is approved.

The test of open-price systems from the business point of view is their usefulness as instruments of price control. The wide-spread approval of such systems indicates that when conditions do not wholly thwart price fixing, open prices become a considerable aid to the price fixers. Their chief service is to identify the enterprises which might otherwise ignore the price agreement. In the past, since it was difficult to check the prices of each enterprise, high prices set by collusion provided an incentive for any enterprise to enlarge its volume and profits by selling slightly below the collusive prices. Knowledge of this temptation led to rumors that rivals were cutting prices; and the rumors strengthened the temptation. Without price publicity it was difficult to identify the first deserters from the price agreement. General desertion often followed, with a consequent break-down of the agreement.

Openly filed prices serve both as preventatives of rumors and as a means of identifying recalcitrants. The persuasion to withdraw a low price does not differ greatly in character from the persuasion previously used; the chief difference is the inclusion of threats to harass the low-price concern by invoking expensive code procedures such as investigation of whether prices are above costs. Nevertheless the persuasion is more effective than before insofar as low prices can be more rapidly and surely located. Furthermore, the knowledge that identification is certain creates fear among those who would otherwise sell below the collusive price and leads them to avoid filing prices which would be unwelcome to the predominant members of the industry.

Whether the waiting period is a necessary element in collusive and coercive activity depends upon the code. The 24 industries studied include 2 without waiting periods, in both of which there is evidence of coercion. In a number of the codes with waiting periods a price list was agreed upon before prices were filed. Where common action has advanced so far the waiting period is not necessary to secure collusion. Cases have also come to our attention in which concerns wishing to quote low prices were so unwilling to encounter the ill-will of others in the industry that even though a waiting period was required after filing they felt it necessary to discuss their proposed prices with the code authority before filing. A producer of soil pipes, for example, thought it wise to arrange a conference with the secretary of his code authority before filing an unusually low price upon a large quantity in order to get a contract with a large mail-order house. In another instance small producers of cold-rolled strip steel, while following the 15-percent price of a large steel producer, said they would be glad to take business at 12 cents. After some hesitation, they filed a request with the code authority to change the classification of the product; and they regarded the code authority's assent as sanction of a 12-cent price. Where power is thus conceded, a waiting period is unnecessary for coercion.

But when the mutual understanding is less perfect and the authority of the industry's leaders is less clearly recognized, a waiting period seems to be a significant means of maintaining control. The code authority for the porcelain breakfast furniture industry, for example, reports that a successful open-price plan in effect before the code (whose description indicates that it was avowedly intended to fix prices) has become disastrous because the waiting period was suspended in the Administrator's order of approval. In a number of the cases of pressure reported to us the low price enterprise yielded gradually and unwillingly or wholly refused to yield. In these cases, mere identification after the sale would have been quite inadequate for the purposes of price fixing.

Moreover, the waiting period has often discouraged those who wished to set prices below the generally maintained level, because of a feeling that others would meet the low price and thereby prevent any advantage to the concern initiating it. In some cases the code authorities have urged this consideration upon members of the industry. In others, it seems to have been influential with no outside emphasis.

VI. Have Open Prices Stopped Price Discrimination

One of the most laudable and generally mentioned purposes of open-price systems has been to prevent the extension to particular customers of special prices and terms not extended to other customers under like conditions.

This purpose seems to have been partially achieved. A considerable number of the letters which attribute benefits to the working of open-price systems mention among the benefits the elimination of special prices to particular customers. In most of the open-price codes the prices have been so filed that it would be difficult or impossible to offer special favors without violating the code.

However, certain open-price systems have been so constructed that they fail to provide guarantees against such price discrimination. These cases are submitted, not as representative of open-price systems, but as exceptions which illustrate the degree to which the results of open-price systems differ according to the forms of their administration.

In the machined waste industry the difficulty lies in the multiplication of brands. Prices are filed upon a large number of grades of waste identified only by trade names. In the words of one of the companies, the 5-day notice required to revise prices "only encourages the manufacturer to file a list price on any number of grades whereby he would be in a position to make most any kind of price he may see fit and still live within the provisions of the code. In fact, we have before us at the present time a price list from one of the manufacturers who has filed prices on about 30 different grades of one kind of waste. These prices mean practically nothing to the consumer or any other manufacturer." By selling various customers various "grades" at various prices, producers give special prices as before. Under these conditions, the open-price system fails to provide a one-price policy.

In the electrical manufacturing industry price discrimination from customer to customer has been incorporated in the form of the price lists filed. Prices are filed not only for certain classes of trade but for individual companies listed by name as entitled to certain preferential treatment in the form of lower prices. The distribution of price lists to competitors serves to inform the industry of this preferential treatment, but apparently leads to imitation of the prices and consolidation of the preferential position.

In the crushed stone, sand and gravel and slag industry the discrimination becomes possible because actual prices need not be filed. While the filing of a price list sets the normal price for the company filing, the company is permitted at any time to sell, without notification to the code authority, a price not lower than the lowest price on file in that area. Within the range from the lowest filed price to the company's filed price customers can be given any sort of preferential price that may seem desirable.

A small member of the lime industry complains that a favorite buyer was given preferred treatment by the filing of a low price upon a nominally different product. The code authority reports another preferential price. In this case the producer filed an unusually low price to remain effective only long enough to close the particular contract; and then restored a higher price by a new filing.

The code for the rubber tire manufacturing industry contains what is presumably an open-price provisions, but provides only for the filing of list prices. Since discounts are not filed, special discounts to special customers need not be reported.

In other industries, whose codes do not provide specifically for customer classification, the code authority has prescribed forms of price reporting which require uniform customer classes not specifically sanctioned in the code itself. Thereby powers which may produce either discrimination or undue rigidity have been exercised without Government review as incidents in plans of price filing.

VII. Have Open Prices Resulted in Price Publicity?

Discussion of open-price systems has always recognized that their outstanding purpose is to supply full and accurate price information in order that policies may be based upon facts rather than upon misrepresentations by buyers and sellers. An important test of open-price systems is their success in providing such information.

The open-price systems established under National Recovery Administration codes have conformed only partially to two requirements of a good system of information—that the facts be disclosed without distortion and that they be equally available to all interested parties.

The most frequent defect in open-price systems as purveyors of the information lies in their failure to make prices available to buyers as well as sellers. The codes of the following industries require that prices be made available to interested members of the industry, but make no requirement of publicity to customers.

Industry:	Code
Oil burner	25
Gasoline-pump manufacturing	26
Lime	31
Farm equipment	39
Plumbago crucible	63
Steel casting	82
Buff and polishing wheel	96
Machine tool and forging machinery	103
Ladder manufacturing	107
Motor fire-apparatus manufacturing	108
Rubber manufacturing (rubber footwear division)	156
Card clothing	222

In certain other industries, although the code specifies that buyers shall receive information, the procedure subjects buyers to difficulties not met by sellers. One such provision is that the code authority shall circulate price lists to members and shall permit lists to be inspected by buyers at its office. An alternative requires members individually to publish their price lists to their customers and obligates the code authority to distribute the lists within the industry. Under the first arrangement customers who cannot easily visit the code authority office have no effective access to the information. Under the second arrangement their access depends upon the ease with which they can secure and compare lists available separately from various companies. Codes which provide one of these two forms of publication include the following:

Available to customers by inspection

Industry:	Code
Cap and closure	58
Gear manufacturing	117

Available to customers by private publication or posting

Industry:	
Steel office furniture (division of business furniture, storage equipment, and filing supply industry)	88
Funeral supply	90
Asphalt shingle and roofing	99
Pipe-nipple manufacturing	131
Concrete masonry	133

Some open-price systems do not require that information be distributed even to members of the industry, but permit or require the code authority to have sole access to it. The codes for heating and cooking appliances and underwear and allied products stipulate that prices shall be filed confidentially. In addition, the codes of the following industries do not require any distribution of filed prices:

Industry:	Code
Gas cock	70
Nottingham lace curtain	78
Copper and brass mill products	81
Funeral supply	90
Limestone	113
Precious jewelry producing	130
Gas appliances and apparatus	134
Refractories	168

Under such systems, if the code authority does not voluntarily distribute information, the members of the code authority may have access to information not available to their business competitors. Moreover, the possibilities of coercion exist without any compensating guarantee of general information. The exact degree of publicity actually prevailing in some of these industries is not known. In the Nottingham lace-curtain industry, however, the code authority circulates tabulated prices from which the names of the sellers have been omitted.

In still other cases, no provision is made for circulating price information, but it is made available for inspection by members of the industry at the office of the code authority. By such a provision access to the information is made relatively difficult for small enterprises not located near the code authority headquarters. A Michigan member of the funeral supply industry writes:

"As to manufacturers' price lists filed with the code authority posting us as to what their prices really are, we get very little information. What access has the ordinary independent factory executive to those lists in Cincinnati, unless he should keep a man there to look up those of his competitors in which he is especially interested? We don't know that such a representative would be allowed to see them."

A few code authorities have manipulated their open-price plans by refusing or delaying to distribute filed-price information which was thought likely to lead to price reductions. The executive secretary of the Excelsior and Excelsior Products Code Authority, for example, states that the prices originally filed were not distributed because it was felt that knowledge of them would "aggravate competitive price cutting." Authority to withhold these prices was found in the fact that the wording of the code specifically requires only the distribution of price revisions. A member of the steel office furniture division of the business-furniture industry reports that his price list has never been circulated to the industry, on the technical ground that his terms did not accompany his filed list, although he submitted the terms 2 days later; and that the real ground of the failure to circulate his list was his unwillingness to quote satisfactory prices and terms.

Where such tactics are used the circulation of filed prices ceases to be informative and becomes propaganda on behalf of prices satisfactory to the dominant producers.

VIII. Recommendations About Policy

The information available indicates the need for important revisions of nearly all the open-price codes. It does not indicate, however, that the situation in various industries is sufficiently similar that changes of the same sort are needed everywhere. In some cases the chief need is to keep the open-price system from working as a system of price fixing. In some cases the chief need is to enable the open-price system to work at all. Many adjustments and modifications appear to be required by particular systems which are not needed in the rest of the codes.

The following suggestions as to policy look toward the establishment of standards of performance for open-price systems and means of checking the effectiveness of that performance. They are intended as tests which should be applied to the provisions made in the particular codes rather than as model clauses to be inserted in these codes.

1. Open-price systems should not be generally abolished without further experiment to see if their abuses can be corrected.

2. Open-price systems should be generally reviewed and revised, not by substitution of a model clause, but with reference to the varying conditions of different industries.

3. Open-price systems should be required to provide true publicity of prices. To this end,

(*a*) The code authority should be forbidden to withhold or delay making public any price information.

(*b*) All price information available to members of the code authority should be circulated to members of the industry.

(*c*) All price information available to members of the industry should be made available to the general public either by full and prompt publication in leading trade papers or by circulation to all interested parties who file their names and agree to pay their pro rata share of the actual additional expense of such enlarged circulation.

(*d*) All price information circulated to members of the industry should be circulated at the same time to an agency of the Government, to be designated by the Administrator.

4. Open-price systems should be limited to the function of providing price publicity. Efforts by the code authority to prescribe the forms of pricing under the guise of prescribing forms for filing should be forbidden, whether they involve setting up standard grades and labels, standard customer classifications and merchandising plans, or standard discounts and allowances. If such uni-

formities are needed, they should be submitted as code modifications, so there may be opportunity to consider their wisdom and safeguard their use. Some forms of pricing now prescribed obviously encourage price discrimination among similar customers, and would not be accepted by the National Recovery Administration.

5. Open-price systems should protect the identity of individual enterprises. To this end prices should be filed with a confidential agency under bond not to reveal to the code authority the identity of enterprises quoting various prices. This agency should be free to report to the code authority and to the industry the various price quotations and the volume of transactions at various prices. It should be obligated to report to the Government in full any case of apparent violation of the price provisions of the code. When such an agency cannot be found or when there is peculiar reason to anticipate abuse of information, the prices should be filed with and distributed by the deputy administrator in charge of the code.

6. Waiting periods should be retained only in open-price systems which clearly have provided the safeguards mentioned in paragraphs 4 and 5. However, the elimination of waiting periods is probably not a sufficient substitute for these safeguards.

7. Reports by the code authority and the Administration member to the Administrator should be prescribed to disclose abuse of open-price systems. Suggested material to be submitted by each code authority now, as a basis for review of its open-price system, are:

(*a*) Copies of all general instructions and suggestions by the code authority to members of the industry about methods of reporting prices or other aspects of the open-price system; together with a statement of the method of circulating price information, any changes in method which may have been made, and the reasons therefor.

(*b*) The number and nature of cases in which suggestions about filed prices have been made to any member of the industry of the code authority or by any of its members.

(*c*) The number of cases in which filed prices have been withdrawn before their effective date and higher prices have been substituted.

(*d*) For a small list of important industry products (to be selected by the Division of Research and Planning), the number of cases in which more than 50 percent of the prices filed upon comparable items are not uniform; together with the uniform price, the low price, and the high price; and the same information for the first prices filed.

8. Provision should be made for prompt governmental investigation of charges of abuse of open-price systems by the code authorities administering them. Establishment of the truth of any charge involving collusion or coercion should automatically suspend the open-price provision which has been abused, pending a public hearing to determine whether and upon what conditions open prices may be retained.

(The following material was subsequently submitted by Mr. Blaisdell.)

THE NATIONAL EMERGENCY COUNCIL,
Washington, April 11, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR HARRISON: On the third day of my testimony before the Senate Finance Committee, you asked that I submit for the record the extent to which code provisions having to do with price control had been approved or disapproved by the National Recovery Administration.

At the time I was making the point that the trend in the National Recovery Administration had been away from price control. I am submitting herewith for the record five documents which supply such information as we have been able to bring together:

1. Summary of code provisions affecting prices, which has been prepared by the Division of Research and Planning of the National Recovery Administration, as of March 8, 1935.

2. A list of codes which prohibit sales below cost as determined by uniform cost methods, as of February 23, 1935.

3. Detailed summary, prepared by the Consumer's Advisory Board, of trade-practice provisions in codes of fair competition which have been stayed, deleted,

or substantially restricted. It should be noted that this summary is incomplete as an indicator of the trend of policy. It probably overstresses the point which I was making, namely, that the trend has been away from price-control provisions. It contains no mention of similar provisions which still remain in codes or which in a few instances may have been placed in newly approved codes or placed in old codes by amendment. Furthermore, it is a record of positive action by the National Recovery Administration and omits instances of inaction where the effect is of equal importance.

4. A summary statement of the "Trend away from code restrictive provisions in National Recovery Administration." This statement was prepared in the administrative office of the National Recovery Administration from data supplied by the Division of Research and Planning of National Recovery Administration.

5. A list of production and capacity control provisions of the codes, prepared by the Division of Research and Planning of the National Recovery Administration. This document supplies a more complete record than the summary prepared by the Consumers' Advisory Board of the National Recovery Administration. It contains the record, though not in complete detail, of those codes which still retain restrictive clauses. (This document was submitted in mimeographed form to the individual members of the committee. I do not know whether it has been made a part of the record. In case it has not been made part of the record, I should like to have it included.)

In view of the fact that this letter is in part explanatory of the materials submitted, may I request that it also be made a part of the record.

Respectfully yours,

THOMAS C. BLAISDELL, JR., *Director.*

Summary of code provisions affecting prices

I. Codes requiring cost accounting systems to effectuate no-sales-below-cost provisions	[1] 356
A. Total cost-accounting systems provided for	466
1. Systems in effect and approved by National Recovery Administration (35 codes)	35
2. Systems not in effect and requiring approval of National Recovery administration (294 codes)	373
(*a*) Systems submitted for approval but not in effect	129
(*b*) Systems not submitted for approval	244
3. Systems authorized in codes and not requiring specific National Recovery Administration approval (27 codes)	58
II. Codes with open-price provisions	[2] 422
A. No waiting period required	148
B. Provision made for waiting period	274
1. Waiting period in effect	92
2. Waiting period stayed	182
III. Distribution codes prohibiting sales below some specified minimum	[3] 38
A. Minimum established on the basis of:	
1. Invoice cost plus transportation	30
2. Net purchase price	2
3. Wholesaler's list price	1
4. Manufacturer's list price	5
B. Mark-up above specified minimum based upon:	
1. Labor or labor and administrative cost	15
2. Specified cost determination basis	12
3. No mark-up provided	11

[1] Based upon 712 codes and supplements.
[2] Based upon 709 codes and supplements.
[3] Based upon 677 codes and supplements (75 distribution codes).

Summary of code provisions affecting prices—Continued

IV. Codes providing for minimum prices, other than those prohibiting sales below cost or providing for establishment of minimum price in an emergency..... [4] 10

A. Prices now in effect..... 6
B. Prices not in effect..... 4

The prohibition of sales below cost as determined by uniform cost methods as of Feb. 23, 1935—Cost methods approved by administration

Approved	Code	Industry	Date expired
Feb. 24, 1934	67	Fertilizer	
Mar. 21, 1934	110	Hardwood distillation	
Mar. 26, 1934	13	Fishing tackle	
Mar. 26, 1934	93	Washing and ironing machine manufacturing	Expired Nov. 1, 1934.
Mar. 29, 1934	33	Retail lumber	Expired Mar. 1, 1935.
Mar. 29, 1934	84	Throwing	
Mar. 29, 1934	234	Macaroni	
Mar. 31, 1934	265	Coffee	
Apr. 6, 1934	38	Boiler manufacturing	
Apr. 25, 1934	132	Malleable iron (expired Mar. 13, 1935)	Extended indefinitely.
Apr. 28, 1934	84-R	Screw machine products manufacturing	
May 5, 1934	333	Canvas goods, retail	
May 10, 1934	16	Hosiery	Expired Aug. 8, 1934.
May 12, 1934	113	Limestone	Extended to Apr. 29, 1935.
May 12, 1934	128	Cement	
June 5, 1934	244-E	Tile contracting	
June 7, 1934	134	Gas appliance and apparatus	
June 12, 1934	283	Ready-made furniture slip-cover manufacturing	
July 20, 1934	98	Fire extinguisher appliance	
July 24, 1934	108	Motor fire apparatus	
July 31, 1934	308-C	California sardine processing	Expired Mar. 1, 1935.
July 31, 1934	316	Punch-board manufacturing	
Aug. 7, 1934	177	Silverware manufacturing	
Aug. 9, 1934	225	Smoking pipe	Expired Feb. 9, 1935.
Aug. 13, 1934	145	Furniture manufacturing	
Aug. 16, 1934	135	Cigar container	Expired Apr. 15, 1935.
Aug. 17, 1934	277	Gray-iron foundry	
Aug. 24, 1934	50	Automatic sprinkler	
Aug. 27, 1934	423	Drop forging	
Sept. 5, 1934	322	Earthenware manufacturing	Expired Apr. 2, 1935.
Sept. 6, 1934	232	Merchandise warehousing	
Sept. 7, 1934	79	Novelty curtain, draperies	Expired Jan. 1, 1935.
Sept. 14, 1934	204	Plumbing fixtures	
Sept. 19, 1934	176	Paper distributing	
Sept. 25, 1934	156	Rubber manufacturing	
Sept. 25, 1934	174	Rubber-tire manufacturing	
Oct. 11, 1934	270	Wood heel	
Oct. 16, 1934	278	Trucking	Expired Jan. 24, 1935.
Oct. 25, 1934	42	Luggage and fancy leather goods	

Trend Away From Code Restrictive Provisions in National Recovery Administration

(Prepared by the administrative office of the National Recovery Administration from data supplied by the Division of Research and Planning, April 3, 1935)

Examination of the codes promulagted under the National Recovery Administration since its inception in June 1933, shows more clearly than any discussion of policies the fact that the Recovery Administration moved away from the more artificial controls of competition well before its first year was run.

This is true specifically in the field of production and price control. A further factor to be noted is that none of the more restrictive provisions approved remotely approached the stringency of proposals which were offered, demanded and battled for by a large number of industrial groups of fully representative character. Such proposals were advanced on behalf of both small and large business enterprises.

The trend away from the more restrictive provisions shows in two ways:

1. Some types of provisions, whose wisdom was doubted from the first, were written into a very limited number of codes experimentally and upon the in-

[4] Based upon 677 codes and supplements.

sistent request of industries faced by chaotic condition, since they appeared to be the only way to obtain the benefits of the act for labor in these industries. Such regulations were denied, however, more frequently than they were approved. Many have since been eliminated or have lost all force. Others are due to be removed.

2. Provisions were approved during the early months which later, in the light of operating experience, were barred by establishment of policy definitions. A graphic demonstration of this is shown by comparing restrictive provisions written into codes before and after March 6, 1934.

March of 1934 represents the turning point on National Recovery Administration policy, especially in the matter of price controls. Policies established then did not become fully retroactive because it was not deemed desirable to upset codes just swinging into full operation; it was preferred that industries learn from experience the impossibility of too stringent controls; it was intended that as fast as trouble developed codes would be reopened and amended. To a considerable extent the latter has been done. In many other cases industries have allowed undesirable provisions to become ineffective without actual removal from the code.

Prior to March 6, 1934, a total of 331 codes and supplements was approved. After that date, down to March 6, 1935, 433 codes and supplements were put into effect.

Of the first group: 204 prohibited selling below individual cost; 22 prohibited selling below a cost specified for the entire industry; 7 permitted the code authority to establish minimum prices; 5 of the latter have been used, but the prices established are now subject to National Recovery Administration review and approval (the retail solid fuel code is in this group).

Of the 433 codes approved since March 6, 1934, only 152 prohibited selling below individual cost; 3 prohibited sales below a specific cost; none permitted the code authority to establish minimum prices.

Of the first 331 codes: 182 provided for open-price filing, of which 128 included a requirement for "waiting periods" before new filings could become effective; of these only 86 remained effective, the rest being suspended by the National Recovery Administration.

Of the codes approved since March 1934: 253 provided for open-price filing, including 140 waiting period provisions, of which only 4 were allowed to remain in force—3 being supplemental to previously approved codes—1 covering the copper industry which required and was given extraordinary treatment.

To make effective prohibitions on selling below cost a large number of codes provided for establishment of uniform cost accounting systems. Here, too, National Recovery Administration drew away from extreme restriction but the line is less clearly drawn by dates because the systems had to be drafted and submitted for approval after the codes went into effect.

The figures, however, tell what happened: 356 codes made provisions for establishment of 466 mandatory uniform cost accounting systems; 164 such systems were submitted by industry for National Recovery approval; 39 were approved (between February and October 1934); 7 of those approved have since expired without renewal; 129 proposals were not given approval; 244 were not submitted by industry, so the provision remains inoperative; 27 of the earlier codes authorized cost systems without National Reocvery Administration review and approval. Under these a total of 58 cost-accounting systems are provided for.

Definite policy since the middle of 1934 has prohibited mandatory cost accounting systems, National Recovery Administration since then having approved only model systems for the information and guidance of members of industry in improving bookkeeping and accounting methods. Many of these have proved highly beneficial in educating business units to sound practices.

It should be noted that the cost systems approved, especially in later months, have kept away from arbitrary provisions of a price-fixing nature, such as fixed percentages for various elements of overhead.

In the field of production control, National Recovery Administration codes include three classes of provisions: (1) Limitation of output by volume (production or sales quotas); (2) limitation of plant and equipment (regulation or prohibition of new installation); (3) limitation of plant and equipment operation (definition of machine or business hours).

Effective provisions coming within the first two groups were used in rare cases. The third appeared in codes more frequently, principally through limitation of the number of labor shifts.

Only a small portion of the production restrictions which were written into codes became or continued effective, and they operate mostly under close governmental supervision.

The grand total of provisions for production and capacity control written into approved codes is 136 (included in 123 codes, some of which employed more than one type of limitation).

Of this total 109 were granted prior to March 6, 1934, and 27 since that date. They divide into classes as follows: Eight production or sales quotas of various types, of which only those in copper and petroleum codes are now fully effective; 3 controls of inventory which have shown no restrictive effect; 32 controls or restrictions on new installation, of which only 10 are fully operative; and 58 restrictions on machine or plant hours.

In addition there are 35 code provisions permitting the code authority to recommend to National Recovery Administration methods for restrictions if necessary, but none of these has been utilized.

In addition to the types of provisions described above, a vastly important field is covered by provisions for establishment of minimum prices during emergency periods, or in areas where competition is out of hand.

During early stages of the National Recovery Administration such provisions were employed with some freedom by code authorities, subject to a National Recovery Administration review which, in certain instances, had to be nominal because of time and personnel limitations.

After the original organizing period, a more stringent review and control of all price emergency findings was established and has been maintained. Few of them are allowed and minimum prices established under this procedure have been strictly limited as to time. Extensions have been granted sparingly. The prices themselves have been held well below the profit level, with the deliberate intent and frequent result that they have operated as a stop-loss arrangement.

Production and capacity control provisions of the codes (approved prior to Dec. 1, 1934) (revised list Apr. 3, 1935)

A. ALL PROVISIONS (APPROVED PRIOR TO DEC. 1, 1934)

Nature of provisions	Number of codes in which provision is in—			Total number of codes having provisions
	Full effect	Partial effect	Of no effect	
I. Authority to make recommendations			35	35
II. Quantity of goods produced:				
(a) Total output of industry fixed, with quotas for members	3	1	3	7
(b) Division of available business among members		1		1
(c) Restriction of inventories of members	1		2	3
III. Machinery or plant hours	20	25	13	58
IV. Installation of new capacity:				
(a) Prohibitions on installations			3	3
(b) Certificates required	6	4	5	15
(c) Recommendations to be made by code authority		2	5	7
(d) Motor transport route certificates	2			2
(e) Agreements among producers permitted			2	2
(f) Right to protest			1	1
(g) Certificates required in permissive areas	1			1
(h) New oil fields	1			1
Total	34	33	69	136
Total number of codes involved (eliminating duplications)				123

B. PROVISIONS APPROVED PRIOR TO MAR. 6, 1934

I. Authority to make recommendations			24	24
II. Quantity of goods produced:				
(a) Total output of industry fixed, with quotas for members	2		3	5
(b) Division of available business among members		1		1
(c) Restriction of inventories of members	1		1	2
III. Machinery or plant hours	16	23	12	51
IV. Installation of new capacity:				
(a) Prohibitions on installations			1	1
(b) Certificates required	6	4	4	14
(c) Recommendations to be made by code authority		1	3	4
(d) Motor transport route certificates	2			2
(e) Agreements among producers permitted			2	2
(f) Right to protest			1	1
(g) Certificates required in permissive areas	1			1
(h) New oil fields	1			1
Total	29	29	51	109

Production and capacity control provisions of the codes (approved prior to Dec. 1, 1934) (revised list Apr. 3, 1935)—Continued

C. PROVISIONS APPROVED MAR. 6-DEC. 1, 1934

Nature of provisions	Number of codes in which provision is in—			Total number of codes having provisions
	Full effect	Partial effect	Of no effect	
I. Authority to make recommendations	----------	----------	11	11
II. Quantity of goods produced:				
(a) Total output of industry fixed, with quotas for members	1	1	----------	2
(b) Division of available business among members	----------	----------	----------	----------
(c) Restriction of inventories of members	----------	----------	1	1
III. Machinery or plant hours	4	2	1	7
IV. Installation of new capacity:				
(a) Prohibitions of installations	----------	----------	2	2
(b) Certificates required	----------	----------	1	1
(c) Recommendations to be made by code authority	----------	1	2	3
(d) Motor transport route certificates	----------	----------	----------	----------
(e) Agreements among producers permitted	----------	----------	----------	----------
(f) Right to protest	----------	----------	----------	----------
(g) Certificates required in permissive areas	----------	----------	----------	----------
(h) New oil fields	----------	----------	----------	----------
Total	5	4	18	27

D. Names of Codes

GROUP I. AUTHORITY TO MAKE RECOMMENDATIONS

The following codes authorize the code authorities to study and make recommendations concerning plans for production or capacity control, but do not authorize the initiation of any specific measures. In no instance has a plan submitted in accrodance with the provisions contained in these codes been approved; and they may therefore be considered as of no effect:

Asphalt shingle and roofing,[1] limestone, fertilizer, California sardine processing, terra cotta, sandstone,[1] soft lime rock,[1] talc and soapstone,[1] lead,[1] manganese,[1] alloy casting, steel casting, textile print-roller engraving,[1] rubber tire, rubber manufacturing, footwear division and mechanical rubber goods; paper and pulp, fiber can and tube, expanding and specialty paper products,[1] bulk drinking straw, wrapped drinking straw, etc.,[1] open-paper drinking cup,[1] paper disc milk-bottle cap, folding paper box, cylindrical liquid-tight container, set-up paper box, photographic mount, food dish paper plate, sample card, glazed and fancy paper, paper-bag manufacturing, tag, fluted cup, pan liner, etc., gummed label, gumming, transparent materials [1] and waterproof paper.

GROUP II. PROVISIONS CONCERNING QUANTITY OF GOODS PRODUCED

(*a*) Total output of industry fixed, with quotas for members. (1) Full effect: Lumber and timber, petroleum, and copper.[1] (2) Partial effect: Atlantic mackerel.[1] (3) No effect: Iron and steel (no action by code authority); cement (industry unable to agree among themselves); glass container (quotas disapproved).

(*b*) Division of available business among members. (1) Partial effect: Corrugated and solid fibre shipping container (80 percent of industry definitely under plan).

(*c*) Restriction of inventories of members (inventory control is also a subsidiary feature of the petroleum production control listed above, and results indirectly from the copper plan also listed above. Inventory control contemplated in the cement code has remained undeveloped). (1) Full effect: Carpet and rug (evidence on this is slight). (2) No effect: Carbon black (too loosely drawn to amount to more than a suggestion); wool textile, sales yarn division [1] (good sales have reduced cause of piling up of inventories, large tolerance under code, very little checking by code authority).

[1] Provision approved after Mar. 6, 1934.

GROUP III. PROVISIONS CONCERNING MACHINERY OR PLANT HOURS

(*a*) Full effect. (1) Two-shift limitation: Cotton textile, throwing, narrow fabrics, and knitted outerwear. (2) One-shift, in some cases also days of week restricted. (Although these provisions prevent some two-shift operation, they are probably of greater importance as a means of enforcing labor hour limitations, which represent material restrictions during rush season.) Dress manufacturing, cotton garment, undergarment and negligee,[1] robes and allied products, fur manufacturing,[1] hat manufacturing, handkerchief manufacturing, schiffli lace, shoulder pad, pleating, stitching, celluloid button and buckle,[1] novelty curtain drapery, umbrella, and rubber-manufacturing industry, rainwear division. (3) Hours of opening and closing and days of week: Cap and cloth hat [1] (important chiefly as the means for enforcing labor hour restrictions). (4) Special provision practically compelling one-shift operation by imposing 1½-time overtime rate for work on other than daylight shift. Of great importance as production-control device: Furniture.

(*b*) Partial effect. (1) Two-shift limitation (the parts of these industries which are affected are narrowly limited): Silk textile, wool textile, upholstery and drapery textile, hosiery, rayon and silk dyeing and printing, textile bag, textile processing, lace manufacturing, velvet, drapery and upholstery trimmings, soft fibre manufacturing,[1] solid braided cord, Nottingham lace curtain, light sewing, underwear and allied products (sewing restricted to one shift), and wall paper. (2) One-shift limitation: Hair cloth (serious violation), ready-made furniture slip covers (compliance probably weak), corset and brassiere (not many would work longer), envelop (only one or two companies accustomed to running longer), medium- and low-priced jewelry manufacturing (restricts only one manufacturer), cigar container (supposed to protect hand plants against possible elimination by machine plants). (3) Sixty-hour limitation: Sewing machine [1] (mainly as an aid to enforcing labor provision). (4) Fifty-two-hour and (by local option) shorter week: Dental laboratories (frequently evaded). (5) Twenty-seven-hour week: Cast-iron soil pipe (largely evaded, but nevertheless a source of pressure on certain companies).

(*c*) No effect. (1) Two-shift limitation: Cordage and twine (no occasion to exceed, but one manufacturer wishing to operate three shifts was permitted to do so); funeral supply (not enough business to exceed two-shift operation); wet mop (small code, no need for provision, nothing heard from it). (2) One-shift: Men's clothing (as operations have been well within the limit, effect very minor, but may help some in ironing out seasonal peaks); coat and suit (same as men's clothing); blouse and skirt (same as men's clothing); slit fabric (would not have exceeded limit in any case as strongly unionized and demand for product limited by operations of other industries which this industry serves; machined waste (production far below limit, perhaps less than 20 percent of that allowed by code). (3) Power of code authority to specify opening and closing hours: Ladies' handbag [1] (no hours established). (4) six-day limit: Glass container (code authority has not looked on 7-day operation as violation); newsprint (144-hour) (industry had not been operating beyond this); waxpaper (144-hour) (industry had not been operating beyond this); paper and stationery (no one wants to exceed 6 days).

GROUP IV. PROVISIONS RESTRICTING INSTALLATION OF NEW CAPACITY

(*a*) Prohibitions on installations. (1) No effect: Iron and steel (basic products only) (no desire to increase capacity); alloys [1] (effective only following determination by code authority. Code authority has taken no action). China clay producing [1] (same as alloys).

(*b*) Certificates required. (1) Full effect: Cotton textile, throwing, lace manufacturing, rayon and silk dyeing, structural clay products, and ice manufacturing. (2) Partial effect: Refractories (although all applications approved, code authority apparently prepared to disapprove applications of persons not in the industry, should these be made); pyrotechnic manufacturing (very little effort at expansion, but this strongly resisted by industry, with success doubtful because of necessity of securing approval of administrator); cordage and twine (introduction of machinery from abroad retarded, but perhaps not prevented, not much desire to increase capacity); excelsior (several applications rejected, but

[1] Provision approved after Mar. 6, 1934.

some noncompliance, and all restrictions were lifted by expiration of provision after 8 months). 3. No effect: Silk textile (no desire to increase capacity); American glassware (only one application, granted); candle manufacturing industry and the beeswax and bleachers refiners (only one application, favorably considered); carbon black (no applications); refrigerated warehousing [1] (no applications).

(*c*) Recommendations to be made by code authority. (1) Partial effect: Glass container (attitude of code authority appears to have been influential); Clay drain tile manufacturing [1] (code authority active, exceeding authority). (2) No effect (no recommendations made by code authority): Clay and shale roofing tile,[1] feldspar, lime industry, dolomite division, tool and implement manufacturing, supplementary code for fabricated metal products manufacturing and metal finishing and metal coating industry [1] (large unused capacity has probably prevented proposals to increase capacity); floor and wall clay tile manufacturing (radical changes in type of kilns make conditions too unsettled to consider applying capacity control).

(*d*) Motor transport route certificates. (1) Full effect: Motor bus, and transit.

(*e*) Agreements among producers permitted. (1) No effect (no agreements made): Motor-vehicle storage and parking, and ready-mixed concrete.

(*f*) Right to protest. (1) No effect (protests ineffective): Cement.

(*g*) Certificates required in permissive areas. (1) Full effect (however, only small part of country covered): Crushed stone, sand and gravel, and slag.

(*h*) New oil fields. (1) Full effect: Petroleum.

[1] Provision approved after Mar. 6, 1934.

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
4-A	Refrigeration (supplement to electrical manufacturing).	Prohibition of premiums	III, (f)	Stayed pending further order (in order of approval).	4A-1	June 9, 1934	
4-C	Wiring devices (supplement to electrical manufacturing).	Termination of price filing on vote of two-thirds of members.	III, 2	Deleted in order of approval	4C-1	Jan. 15, 1935	
	Do	Prohibition of consignment selling	VI, 9	Stayed, in order of approval, pending further order.	4C-1	do	
9	Lumber and timber products.	Production control	VIII, K	10 percent additional quota authorized for sustained-yield operation.	9-10	Mar. 3, 1934	
	Do	do	VIII, C, 2	Past shipments made alternative for past production as basis of allotment quotas.	9-16	Apr. 12, 1934	
	Do	do	VIII, C, 6	Optional alternative provided: operating hours instead board feet.	9-31	June 5, 1934	
	Do	do	VIII, G	Transfers or cumulation of quotas forbidden.	9-140	Oct. 6, 1934	
	Do	Minimum-price fixing	IX	Emergency declared, Cost protection established on basis of "reasonable costs."	9-46	July 16, 1934	
	Do	do	IX	Substitution of emergency provisions of office memorandum 228.	9-47	do	
	Do	do	IX	Minimum prices suspended	9-297	Dec. 22, 1934	
10	Petroleum						Transferred to Petroleum Administrative Board.
11	Iron and steel	Code authority permitted to set aside a price believed by them to be an "unfair price" and fix a "fair base price."	Schedule E, 5.	Deleted	11-2	May 30, 1934	
	Do	Named basing points at which filed price quotations might be made.	Schedule F	Number of basing points increased	11-2	do	
	Do	All-rail rate fixed as mandatory transportation charge in delivered price.	Schedule E, 4.	Code authority given discretion to modify all-rail charges when other than rail transportation is used.	11-2	do	
	Do	Open-price filing with 10-day waiting period.	Schedule E, 2.	Filing lower price to meet competition, without observing waiting period, permitted.	11-2	do	
	Do	Prohibition of contracts for delivery beyond following quarter.	Schedule E, 9.	Modified so as not to apply to contracts for delivery for identified structures and railroad cars or for specific government jobs.	11-2 (schedule E, 8)	do	

	Do	No contract to contain terms more favorable than those at date of contract.	VII	Contracts guaranteeing price reductions to meet competitors' prices (on standard T-rails, angle bars, and rail joints), permitted.	11-2 (schedule E, 3)	do	
13	Fishing tackle manufacturing.	Terms for those buying at jobber's prices, fixed at 2/10 e. o. m. net 60.	III, 5	Exempts sales between manufacturers, covered in III, 2; makes 2/10 e. o. m., net 60, maximum terms.	13-1 B	Nov. 14, 1933	
	Do	Prohibition of sales below "reasonable cost of production and distribution", as determined by a formula, subject to National Recovery Administration approval; sales to other manufacturers and sales of close-out merchandise excepted.	III, 1	Excepts sales to meet competition, provides for other exceptions upon petition of members presenting majority of production of the industry, subject to National Recovery Administration review. Provides for filing price lists for information only.	13-6	Mar. 2, 1934	Standard method of cost accounting approved Mar. 26, 1934.
	Do	Provision for sales to other manufacturers at not less than factory cost, such sales to be reported to code committee, which shall define factory cost.	III, 2	Sales between manufacturers subjected to approval of code committee, from whose decision appeal to the National Recovery Administration may be made.	13-6	Mar. 21, 1934	
18	Cast-iron soil pipe	Uniform sales contracts	Sec. 8	Deletion	18-9	Aug. 3, 1934	
	Do	Mandatory uniform accounting	Sec. 9	do	18-9	do	
19	Wall paper manufacturing.	Uniform cost system	X	Made subject to National Recovery Administration approval.	19-4	Dec. 30, 1933	Part of an amendment which was a general revision and clarification of the code, which was one of those approved early.
	Do	Prohibition of sales below cost	VII, 6	Cost related to cost system; and meeting competition permitted.	19-7	Aug. 24, 1934	
21	Leather	Standard credit terms	XIV, 1	Lower rate of interest permitted on past-due accounts, and 3 days' grace on cash discounts.	21-3	Feb. 16, 1934	
	Do	do	do	Complete revision and expansion of regulation of credit and sales terms.	21-9	Oct. 3, 1934	
26	Gasoline pump	Governing repair and replacement of defective material.	VI, 4 (c)	Limitation removed upon liability for damages caused by defective material.	26-3	Dec. 21, 1933	
33	Retail lumber, etc	Code jurisdiction	III	Exempted carload shipments direct from mill from code jurisdiction.	33-10	Apr. 9, 1934	Effect was to stay application of modal mark-up to carload sales direct from mill.
	Do	Statistical modal mark-up requirement.	VIII, 8	Termination of modal mark-up requirement.		Mar. 1, 1935	Lapsed by limitation; no order issued.
37	Builders' supplies trade.	Modal mark-up	IX (b)	Substituted principles of office memorandum 228.	37-20	Oct. 25, 1934	
39	Farm equipment	Limitation of credit terms	VII, 8	Excluding Government sales from code provision limiting credit period to 2 years.	39-6	May 7, 1934	

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
42	Luggage and fancy leather goods.	Liberalization of credit terms in Southern States.	VI, 12 (b)	Amendment of existing provision	42-1	Mar. 10, 1934	
45	Saddlery manufacturing.	Future dating	X, 1	Amendment permitting future dating at convenience of manufacturer on shipments in excess of $1,000.	45-1	May 18, 1934	
	Do	Resale price agreements	X, 2	Amendment releasing resellers from resale prices, but must abide by code restrictions on terms of payment.	45-1	do	
46	Motor vehicle retailing	Resale price maintenance	IV, B, 1	Stayed as regards sales to governmental or municipal buyers.	46-23	July 31, 1934	
	Do	Used-car trade-in allowances	IV, A, 4	Approval of regulations	46-53	Dec. 8, 1934	
	Do	Used-car allowances	IV, A	Approval of modification of allowance provisions.	46-73	Feb. 23, 1934	
47	Bankers' code	Trade practices; uniform service charges, maximum rates of interest, hours of banking.	VIII	Stayed until Jan. 1, 1934	47-3	Dec. 11, 1933	
	Do	do	VIII	Deleted	47-17	Nov. 28, 1934	
60	Retail trade	Loss-limitation provision	VII, 1, (1)	Amendment authorizing different mark-up for drug division than general retail code.	60-A-1	Dec. 4, 1933	
	Do	Minimum price provision, drug division.	Schedule A, sec. 6.	Amendment establishing a different minimum price provision for drug division.	60-23	Apr. 29, 1934	Method of determining "cost" much harder on consumer than general retail loss limitation provision.
	Do	Loss-limitation provision	VIII, 1, (1)	Suspended with respect to stores in towns under 2,500 population.	Executive Order 6710.	May 15, 1934	Executive Order 6710 exempts members who operate not more than 3 establishments in towns of not over 2,500 population from minimum-price provisions of codes.
	Do	Minimum price, drug division	Schedule A, 6.	Amendment prohibiting the sale below manufacturer's wholesale list price per dozen.	60-195	Sept. 21, 1934	
60-B	Retail custom fur manufacturing.	Entire code		Stayed	60-B-2	Sept. 25, 1934	
66	Motor bus	Minimum rates and tariffs	VII, 2 (c)	do	66-19	Jan. 10, 1935	
67	Fertilizer	Restriction on number of grades	VII, 1	Permits agents to sell stocks of unlisted grades on hand at time of grade list approval.	67-53	Mar. 23, 1935	

71	Paint, varnish and lacquer manufacturing.	Manufacturing restrictions (sizes, shades, etc.).	XIV	Artists' colors excepted from manufacturing restrictions.	71-3	Mar. 2, 1934	
	Do	Dating restriction	XVII, (a), (b) and (c).	Special restrictions established on datings on sales of artists' colors.	71-3	do	
	Do	Mandatory inclusion of processing costs in calculation of costs.	XXII, 4	Approval refused of further renewal of processing costs schedule (approved by Orders 71-7, -28, -54), expiring Jan. 26, 1935.		Mar. 20, 1935	
84	Fabricated metal products manufacturing and metal finishing and metal coating; supplements as follows:						
84-1	Metallic wall structure.	Prohibition of guarantees	V, 11	Amended to permit guarantee of workmanship and material.	84A-5	Oct. 30, 1934	
84-10	Cutlery and manicure implement and painters' and paperhangers' tool manufacturing and assembling.	Price filing	VII	Stayed for 60 days	84J-14	Feb. 26, 1935	Stayed insofar as this article applies to table and trade knife, scissors and shears, pocket-knife, straight razor, and manicure implements sections.
84-23	Machine screw nut manufacturing.	Prohibition of contracts protecting buyer against decline but not seller against advance, etc.	VII, K, L, and M.	Deleted by amendment	84J-14	Dec. 19, 1934	
84-31	Warm air furnace pipe and fittings manufacturing.	Waiting period in open-price provision.	VII (a)	Stayed indefinitely by order of approval.	84E1-1	May 18, 1934	
84-34	Wire, rope, and strand manufacturing.	Mandatory merchandising plan	VI	Stayed for certain members of industry.	84H1-13	Mar. 2, 1935	
84-38	Complete wire and iron fence.	Price filing	VII	Substitution of office memorandum 228 provisions for original price-filing provisions.	84L1-19	Jan. 22, 1935	
	Do	do	VII	Export sales exempted from price-filing provisions (by amendment).	84L1-22	Mar. 1, 1935	
84-43	Vitreous enameled ware manufacturing.	Uniform terms of sale	V, J, 1, 2, and 3.	Stayed for 6 months	84Q1-5	Nov. 16, 1934	
88	Business furniture, storage equipment, and filing supply.	Price filing and antidiscrimination	V (a) and VI of divisional codes.	Exempted purchases by U. S. Procurement Division and purchases, involving land-grant freight rates, to Government.	88-34	Feb. 19, 1935	A 90-day renewal of earlier exemption covering former class of purchases and of a later exemption covering latter class.
92	Floor and wall clay tile	Prohibition of sales of unset tile	XII, B, 1	Stayed as affects governmental projects.	92-17	Feb. 2, 1935	

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
93	Washing and ironing machines manufacturing.	Prohibition of sales below cost except dropped lines, etc., to be disposed of under conditions prescribed by code authority subject to National Recovery Administration approval.	VII, A, 1	Amendment permitting sales of dropped lines under conditions necessary to effect sale; also permitting sales below cost to meet competition.	93-11	June 2, 1934	
	Do	Prohibition of price quotation other than f. o. b. factory.	VII, A, 4	Deleted by amendment	93-26	Feb. 21, 1935	
	Do	Requirement that parts replaced under guarantee be shipped f. o. b. factory.	VII, A, 7	Eliminated by amendment	93-26	do	
101	Cleaning and dyeing trade.	All trade practice provisions	VII	Suspended by Executive order relating to service trades.	Executive Order 6723; administrative order X-37.	May 26, 1934 May 28, 1934	
109	Crushed stone, sand and gravel, and slag.	Inclusion of contractor-producer under the code.	II	Exemption given contractor-producers on public projects from code provisions.	109-80	Feb. 6, 1935	Extending for further 90-day period earlier exemption.
114	Scientific apparatus	Prohibition of sales below cost	VII, 2 (b)	Stayed for 90 days	114-15	Jan. 11, 1935	
121	Hotel	All trade practice provisions	VII	Suspended by Executive order relating to service trades.	Executive Order 6723. Administrative order X-54.	May 26, 1934 May 28, 1934	
128	Cement	Restriction on channels of distribution.	XI	Stayed pending submission of substitute amendments.	128-4	Jan. 23, 1934	
142	Retail jewelry	Loss-limitation provision	VII	Suspended with respect to stores in small towns.	Executive Order 6710.	May 15, 1934	Executive Order 6710 exempts from minimum price provisions of code members operating not more than 3 stores in towns under 2,500 population.
	Do	Restrictions on sale of prison-made goods.	VIII, 3	Deleted	142-20	July 20, 1934	
147	Motor-vehicle storage and parking.	All trade-practice provisions	VIII, IX, and X.	Suspended by Executive order relating to service trades.	Executive Order 6723. Administrative order X-37.	May 26, 1934 May 28, 1934	

155	Oxy-acetylene	Limitation of pricing to f. o. b. plant or warehouse.	VII (VII-A), 4.	Quotation f. o. b. freight station also permitted.	155-16	July 26, 1934	
	Do	Requirement for charging of cylinder rental.	VII (VII-A), 8.	Gas sold for medical use exempted	155-16	do	
	Do	Pricing practice	VII-A, B	Permanent stay of Order X-4, which exempted industries, when dealing with hospitals, from code provisions as to pricing, etc.	155-21	Sept. 21, 1934	
156	Rubber manufacturing	Standard terms	Ch. II, IV-A, 4 (b).	Discount rates stayed	156-8	Mar. 17, 1934	Applies to Pacific coast buyers.
	Do	Prohibition of sales below cost	Ch. I, VII-A; II, III-A; IV, III-A; VII, IV-A; X, V-A.	Sales permitted below individual cost to meet competition.	156-56	Dec. 18, 1934	
	Do	Prohibition of post-dating	Ch. X, IV-A 1 and 2.	Stayed	156-61	Jan. 26, 1934	
	Do	Prohibition of other than standard guarantee.	Ch. VII, V, 3.	do	156-63	Jan. 31, 1935	
	Do	Price filing	Ch. VI, III-A 4 and 5.	Stayed pending adjustment	156-64	Feb. 1, 1935	Applies to heel and sole division.
159	Dry and polish mop	Requirement of price publication and prohibition of sales below published prices.	VII, 11 and 12.	Deleted	159-10	Oct. 25, 1934	
165	Nonferrous foundry	Prohibition of flat per-pound quotation for a variety of castings.	Sec. 3 (n) of miscellaneous sand castings division.	Stayed until June 1, 1935, with respect to orders for shipbuilding companies.	165-25	Jan. 11, 1935	
175	Medium-and low-priced jewelry.	Prohibition of unauthorized manufacture, etc., of fraternity-controlled insignia.	Schedule A. 1 (c).	Deleted	175-45	Mar. 4, 1935	
182	Retail food and grocery	Mandatory inclusion of transportation charge at cost.	VIII, 1 (3)	Stayed pending further hearing	182-1	Dec. 30, 1933	
	Do	Requirement of conformity with pure food laws.	IX, 1 (L)	Deleted	182-1	do	
	Do	Mandatory inclusion of transportation charge at common-carrier rate.	VIII, 1 (3)	Substituted for provision previously stayed.	182-8	Apr. 4, 1934	
	Do	Loss-limitation provision	VIII, 1 (3)	Suspended as to stores in small towns.	Executive Order 6710.	May 15, 1934	Executive Order 6710 exempts from minimum-price provisions of codes firms operating not more than 3 stores in towns under 2,500 population.

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
182	Retail food and grocery	Mandatory inclusion of transportation charges at common-carrier rates.	VIII, 1 (3)	Provision as amended indefinitely stayed.	182-10	May 25, 1934	
	Do	Loss-limitation provision	VIII, 1 (4)	Sales below cost to meet competition permitted.	182-45	Nov. 23, 1934	Original provision did not permit meeting competitors' prices if latter were not in conformity with code.
	Do	Prohibition of use of premiums	IX, 1 (K)	Regulation against abuse substituted for prohibition.	182-45	do	
183	Household ice refrigerator.	Prohibition of sales below cost; and against consignment sales.	VIII, 12, 17	Export sales exempted	183-17	Jan. 19, 1935	
	Do	Waiting period before price decreases effective.	VIII	Waiting period eliminated	183-17	do	
184	Shoe and leather finish, polish, and cement manufacturing.	Prohibition of sales below cost	VII, 1, I	Substitutes exhibit B, Office Memorandum No. 228.	184-6	Aug. 2, 1934	
191	Cinders, ashes and scavenger trade.	Entire code		Entire code canceled by Executive order.	191-6	Dec. 19, 1934	
195	American match	Prohibit of guarantees against price decline.	VIII, 1(e)	Stayed for 6 months	195-8	Jan. 25, 1935	
196	Wholesale food and grocery.	Requirement that pure food laws must be obeyed.	VII, 10	Deleted from code in order of approval.	196-1	Jan. 4, 1934	
	Do	Mandatory inclusion of transportation charges at cost.	VII, 12, (4)	Stayed in order of approval	196-1	do	
	Do	Loss limitation, requiring mandatory markup over invoice cost.	VII, 12 (1)	Stayed insofar as Government purchases are concerned.	196-24	Sept. 5, 1934	
	Do	Loss limitation provision	VII, 12(5)	Changed provision permitting the meeting of prices authorized by this code.	196-39	Nov. 22, 1934	
	Do	Prohibition of use of premiums	VII, 15	Relaxed, to be regulated	196-39	do	
	Do	Prohibition of sales between members below cost.	VII, 12(1)	Stayed indefinitely pending further amendment.	196-41 196-53	Dec. 22, 1934 Mar. 8, 1935	
200	Sanitary napkin	Administrative Order No. X-4, which stayed all selling practices in dealing with hospitals supported by public subscription or endowment.	VII, j, k	Stayed permanently	200-4	May 31, 1934	
201-B	Wholesale wallpaper trade.	Provision that sample books, etc., must have net cost indicated thereon.	IV, 8, (b)	Deletion	201-B-4	May 10, 1934	

201-D	Beauty and barber equipment and supplies.	Open price filing with waiting period.	V, 1, (a)	Stayed in order of approval	201-D-1	Apr. 4, 1934
201-L	School supplies and equipment trade.	do	V, 1, (a)	do	201-L-1	July 5, 1934
201-M	Athletic goods distributing trade.	Quoting and/or selling on lower prices to any governmental agency than to schools and colleges.	IV, 15	do	201-M-1	July 17, 1934
201-N	Woolens and trimmings distributing trade.	Selling below cost	IV, 3	do	201-N-1	July 23, 1934
201-O	Button jobbers' or wholesalers' trade.	Provision against willfully destructive price cutting.	V, 1, (a)	Enlarged, in order of approval, to allow appeal to National Recovery Administration.	201-O-1	July 26, 1934
201-P	Sheet-metal distributors.	Prohibition of selling below cost	IV, 1	Amended by inclusion of destructive price-cutting and emergency price-fixing provisions.	201-P-1	July 27, 1934
201-Q	Wholesale hardware	do	IV, 6	Amended, in order of approval, to prohibit "destructive price cutting"; sale below net invoice plus transportation made prima facie violation, emergency price fixing added.	201-Q-1	July 30, 1934
201-R	Wholesale paint, varnish, lacquer, allied and kindred products.	Regulation of free goods	IV, 6, (c)	Section approved only as long as article XX of paint, varnish, and lacquer manufacturing code is effective (correction of proviso in order of approval).	201-R-4	Nov. 30, 1934
201-V	Wholesale jewelry trade.	Prohibition of selling below cost	V	Amended, in order of approval, to prohibit "destructive price cutting"; sale below net invoice plus transportation made prima facie violation; emergency price fixing provision added.	201-V-1	Aug. 21, 1934
204	Plumbing fixtures	Definition of wholesaler	VIII, 7	Mail order houses qualified as wholesalers.	204-3	Jan. 31, 1934
	Do	All trade practice provisions	VII and VIII.	Deleted entirely	204-27	Mar. 25, 1935
208	Picture molding and picture frame.	Price and cost filing	VII, 3, 4, 5, 6	Stay of cost, price, and discount filing provisions and of prohibition of sale on terms other than those filed until June 16, 1935.	208-14	Nov. 24, 1934
219	Bedding manufacturing.	Prohibition of consignment sales: uniform cash discount.	VII, part I	Export sales exempted	219-8	July 10, 1934
224	Furniture and floor wax and polish.	General trade practice	VIII	Excepts silver and metal polish and sweeping compound divisions from trade-practice provisions.	224-7	July 12, 1934
	Do	Prohibition of free goods	VIII, 6	Restricts free goods prohibition so as not to apply to premiums to ultimate consumers; permits advertising allowances when for a proper charge.	224-7	do
	Do	Open price filing	VIII, 11	Delete open price provisions	224-7	do

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
225	Smoking pipe manufacturing.	Prohibiting guarantees of pipes selling for less than $1, and return of such pipes by dealers for adjustment.	VII, 13	Permitting return of pipes by dealers, provided name and address of customer is given the manufacturer.	225-1	Jan. 15, 1935	
234	Macaroni	Waiting period in open price plan	VII, 6	Stayed indefinitely in order of approval.	234-1	Jan. 29, 1934	
236	Cooking and heating appliances.	Open price filing with 10-day waiting period.	VIII, 2	Waiting period stayed indefinitely	236-1	Jan. 30, 1934	
237	Alloy casting	Waiting period in open price filing	VII, 1	Stayed indefinitely in order of approval.	237-1	do	
238	Fan and blower	do	VII, 1	do	238-1	do	
240	Advertising display installation trade.	All provisions of code other than labor provisions.	VII and VIII.	Indefinitely suspended by Executive order.	Executive Order 6723, X-37.	May 26, 1934 May 28, 1934	Service Trade Code. Separate Trade-practice provisions may be proposed by areas.
	Do	Open price filing with 10 day waiting period.	VII	Stayed in order of approval	240-1	do	
241	Chewing gum manufacturing.	Waiting period in open price provision.	VII, 1	Stayed indefinitely in order of approval.	241-1	Jan. 30, 1934	
243	Slide fastener	do	VII, 2	do	243-1	Jan. 31, 1934	
244	Construction: No items to report on general code. On supplements see following:						
244-E	Tile contracting	Prohibiting sale of unset tile	IV, 9	Stay of provision as applied to sales to Federal, State, county, and municipal governments.	244-E-16	Jan. 29, 1935	
245	Corrugated and fiber container manufacturing.	Waiting period in open prices	VI 2, 9	Stayed indefinitely in order of approval.	245-1	Feb. 1, 1934	
246	Paper disk milk bottle cap.	do	VI 2, 9	do	246-1	do	
248	Glazed and fancy paper manufacturing.	do	VI, 2, 9	do	248-1	do	
249	Tag manufacturing	do	VI, 2, 9	do	249-1	do	
257	Printing equipment industry and trade.	do	VII, 2, (c), 4, (e), 4, (f).	do	257-1	Feb. 2, 1934	
258	Cast-iron boiler and cast-iron radiator industry.	Resale price maintenance	VIII, 3	Deleted in order of approval	258-1	Feb. 3, 1934	
260	Ornamental moulding, carving, and turning.	Waiting period in open prices	VIII, 2	Stayed indefinitely in order of approval.	260-1	Feb. 5, 1934	
261	Foundry supplies	do	VII, 2	do	261-1	Feb. 6, 1934	

263	Machine knife and allied steel products.	----do----	VIII	----do----	263-1	----do----	
269	Carbon-black manufacturing.	----do----	V	----do----	269-1	Feb. 8, 1934	
270	Wood heel	----do----	VII, 2	----do----	270-1	Feb. 9 1934	
272	Unit heater and unit ventilator manufacturing.	----do----	VII, 4	----do----	272-1	Feb. 10, 1934	
275	Chemical manufacturing: No items to report on general code. On supplements see following:						
275-A	Agricultural insecticide and fungicide.	----do----	VI (a)	----do----	275-A-1	May 1, 1934	
	Do	Compulsory jobber agreements requiring jobbers to abide by code provisions.	V, 2	Extends provision to June 16, 1935, only so far as it requires jobbers to abide by code provisions banning guarantees against price decline; consignments; warehousing; post datings.	275-A-16	Nov. 30, 1934	
	Do	Emergency minimum prices	V, 1	Extending emergency minimum prices (established Nov. 9, 1934) to Apr. 7, 1935.	275-A-18	Feb. 6, 1935	
275-B	Carbon dioxide	Waiting period in open prices	IV, 2	Stayed indefinitely in order of approval.	275-B-1	May 4, 1934	
	Do	Open price filing	IV, 1, 2, 3	Revises provisions deleting waiting period (office memorandum 228).	275-B-10	Aug. 16, 1934	
	Do	Resale price maintenance	IV, 4	Substitutes section prohibiting price-maintenance agreements.	275-B-10	----do----	
	Do	Misuse of containers	V, 2	Section amended to include requirement that regulations thereunder must have Government approval.	275-B-10	----do----	
275-C	Industrial alcohol	Establishment of uniform agency contracts without National Recovery Administration approval.	V, 10	Stayed in order of approval	275-C-1	Aug. 21, 1934	
277	Gray iron foundry	Open prices, sale below cost, destructive price cutting, and emergency price fixing.	VI	Revised to conform to office memorandum 228.	277-20	Nov. 1, 1934	
280	Retail solid fuel	Emergency cost determination	V, 4	Revised by requiring National Recovery Administration review.	O. M. 268	July 27, 1934	
281	Laundry trade	All trade practice provisions	VI, VII	Indefinitely suspended	Executive Order 6723, Administrative order X-50.	May 26, 1934 June 13, 1934	Comes under Executive order relating to service trades.
282	Restaurant trade	Minimum mark-up over cost of materials.	VII, 12	Indefinitely stayed in order of approval.	282-1	Feb. 16, 1934	Executive order relating to service trades (Executive Order 6710) applies to this code.

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
286	Beauty and barber shop mechanical equipment.	Waiting period in open prices	VI, 3, (c)	Indefinitely stayed in order of approval	286-1	Feb. 16, 1934	
289	Cloth reel	do	VI, 2, 9	do	289-1	Feb. 12, 1934	
290	Photographic mount	do	VI, 2, 9	do	290-1	Feb. 17, 1934	
291	Wood cased lead pencil manufacturing.	Partial boycott of dealers importing nonstandard items; customer classification; fixed discounts; resale price maintenance.	V, 1, IX, 8-15.	do	291-1	do	
	Do	Open price filing (prices to be restricted to minimum prices to be submitted by code authority and approved by administrator	VII, X	Stayed for 90 days Stayed for an additional 90 days	291-14 291-16	Nov. 24, 1934 Mar. 6, 1935	Inasmuch as approval was denied minimum price schedule, open price provisions became unworkable making their stay desirable.
293	Gumming	Waiting period in open prices	VI, 2, 9	Stayed indefinitely in order of approval.	293-1	Feb. 17, 1934	
294	Gummed label and embossed seal.	do	VI, 2, 9	do	294-1	do	
295	Waterproofed paper manufacturing.	do	VI, 2, 9	do	295-1	do	
297	Advertising distributing trade.	All trade practices	V	Suspended	E. O. 6723 A. O. X-37	May 26, 1934 May 28, 1934	Executive Order 6723 staying trade-practice provisions of all service trades.
300	Lye	Open price filing, waiting period	VII, 1	Stayed indefinitely in order of approval.	300-1	Feb. 19, 1934	
303	Cordage and twine	Filing price lists, regulation of prices to cost; trade discounts, freight charges, contractual terms, etc.	Schedule A	Stayed	303-12	Sept. 22, 1934	
	Do	do	do	Deleted by amendment	303-17	Mar. 7, 1935	
304	Outdoor advertising trade.	Waiting period in open prices	VIII	Stayed in order of approval	304-1	Feb. 24, 1934	
311	Ready-mixed concrete	do	VII, 2, (c)	do	311-1	Feb. 27, 1935	
315	Industrial safety equipment industry and trade.	Open price provision	VII, 7 (g)	Revised to conform to office memorandum 228.	315-17	Feb. 21, 1935	
319	Newspaper printing press.	Prohibition of sales below cost	VII, 2	Amended to permit sales below cost in certain instances.	319-6	Aug. 10, 1934	
324	Textile print roller engraving.	Emergency minimum prices	VIII, 2	Amended to conform to office memorandum 228.	324-19	Nov. 16, 1934	
327	Machine applied and stapling machine.	Open price filing	IX, 10	No deviation permitted from price filed.	327-5	June 19, 1934	

330-A	Waste paper trade	Emergency minimum prices	IV, 2	Minimum price schedules established.	330-A-3	Aug. 21, 1934	
				Canceled minimum price schedules previously approved.	330-A-7	Dec. 28, 1934	
333	Canvas goods	Waiting period in open prices	VII	Stayed	333-15, 333-16	Jan. 2, 1935 Feb. 7, 1935	
334	Beverage dispensing equipment.	do	VIII, 2	Stayed in order of approval	334-1	Mar. 16, 1934	
	Do	Customer classification	VII, 20	Added in conformity with office memorandum 367.	334-19	do	
342	Sanitary and waterproof specialties.	Price filing	VII, 6	Stayed for 90 days	342-19	Jan. 22, 1935	
346	Bowling and billiard operating trade.	All trade-practice provisions	VI, VII	Suspended by Executive order relating to service trades.	Executive Order 6753. Administrative order X-37.	May 26, 1934 May 28, 1934	
347	Machinery and allied products industry: No items to report on general code. On supplements see following:						
347-3	Locomotive manufacture.	Prohibiting sales to buyers who do not release manufacturer from "consequential damages."	VI, B	Stayed order of approval	347-3-1	Apr. 30, 1934	
347-6	Woodworking machinery.	Waiting period in open prices	VIII, A and B.	do	347-6-1	May 14, 1934	
	Do	Resale price agreement authorization.	VIII, E	do	347-6-1	do	Stayed permanently Sept. 21, 1934.
347-7	Beater & Jordan and allied products.	Waiting period in open prices	VIII, A	do	347-7-1	do	
	Do	Resale price agreement authorization.	VIII, E	do	347-7-1	do	
347-8	Water-meter manufacturing.	Waiting period in open prices	VII, A	Stayed in order of approval	347-8-1	May 16, 1934	
347-9	Diamond core drill manufacturing.	do	VIII, A	do	347-9-1	May 31, 1934	
	Do	Mandatory resale price maintenance.	VIII, E	do	347-9-1	do	
347-10	Mechanical lubricators.	Waiting period in open prices	VIII, A	do	347-10-1	June 4, 1934	
347-11	Contractors pump manufacturing.	do	VIII, A	do	347-11-1	June 5, 1934	
347-13	Water power equipment.	do	VII, A	do	347-13-1	June 7, 1934	
347-14	Rolling mill machinery and equipment.	do	VIII, A	do	347-14-1	do	
347-15	Pulverizing machinery and equipment.	Mandatory resale prices	VIII, B	do	347-15-1	June 9, 1934	

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
	Beater & Jordan and allied products—Con.						
347-16	Steam engine manufacturing.	Waiting period in open prices	VIII, A	Stayed in order of approval	347-15-1	June 11, 1934	
	Do	Resale price agreement prohibition of pooled buying.	VIII, D	do	347-15-1	do	
347-17	Rock and ore crushers machinery.	Waiting period in open prices	VIII, A	do	247-17-1	do	
	Do	Prohibition of pooled buying. Mandatory resale prices.	VIII	do	347-17-1	do	
347-18	Reduction machinery.	Waiting period in open prices	VIII, A	do	347-18-1	do	
	Do	Prohibition of pooled buying, mandatory resale prices.	VIII	do	347-18-1	do	
347-19	Hoisting engines	Waiting period in open prices	VIII, A	do	347-19-1	June 12, 1934	
347-20	Hoist builders	do	VIII, A	do	347-20-1	do	
	Do	Prohibition of pooled buying, mandatory resale prices.	VIII	do	347-20-1	do	
347-21	Kiln cooler and dryer.	Waiting period in open prices	VIII, A	do	347-21-1	do	
	Do	Prohibition of pooled buying, mandatory resale prices.	VIII	do	347-21-1	do	
347-22	Conveyor and material preparing equipment.	Waiting period in open prices	VIII, B	do	347-22-1	June 19, 1934	
	Do	Mandatory standard appraisal regulations for trade-ins.	IX, 2	Stayed in order of approval for 60 days.	347-22-1	do	Stay expired at end of 60 days and was not renewed.
	Do	Mandatory resale prices	IX, 15	Stayed in order of approval pending submission of evidence.	347-22-1	do	Stay terminated September 25, 1934, resale prices now in effect.
347-24	Roller and silent chain.	Waiting period in open prices	VIII, A	Stayed in order of approval	347-24-1	July 5, 1934	
347-25	Power transmission machinery.	do	VIII, A	do	347-25-1	July 6, 1934	
347-26	Caster and floor truck manufacturing.	do	VIII, A	do	347-26-1	July 7, 1934	
347-27	Mechanical press manufacturing.	do	VIII, A	do	347-27-1	July 9, 1934	
347-28	Water softener and filter.	do	VIII, A	do	347-28-1	do	
347-30	Multiple V-belt drive manufacturing.	do	VIII, A	do	347-30-1	July 13, 1934	

347-31	Envelop machinery manufacturing.	Mandatory resale prices	IX, 1	do	347-31-1	July 20, 1934
347-32	Air filter manufacturing.	Waiting period in open prices	VIII, A	do	347-32-1	July 21, 1934
347-33	Gas-powered truck manufacturing.	do	VIII, A	do	347-33-1	do
347-34	Sprocket-chain manufacturing.	do	VIII, A	do	347-34-1	do
347-35	Oil field pumping manufacturing.	do	VIII, A	do	347-35-1	July 25, 1934
347-36	Refrigerating machinery manufacturing.	do	VIII, A	do	347-36-1	July 30, 1934
	Do	Price fixing in emergency	VII	do	347-36-1	do
347-37	Concrete mixer	Waiting period in open prices	VIII, A	do	347-37-1	Aug. 1, 1934
	Do	Limitation of guarantees	IX, 8	do	347-37-1	do
	Do	Prohibition of rental of machinery	IX, 11	do	347-37-1	do
	Do	Requirement that full delivery cost must be added on delivered sales.	IX, 12	do	347-37-1	do
347-38	Jack manufacturing.	Waiting period in open prices	VIII, A	Stayed in order of approval	347-38-1	do
	Do	Prohibiting manufacturers from selling to buyers not agreeing to abide by provisions of this code.	VIII, E	do	347-38-1	do
	Do	Prohibition of sales to industrial buyers through brokers.	IX, 6	do	347-38-1	do
	Do	Prohibiting acceptance of trade-ins	IX, 7	do	347-38-1	do
347-39	Railway appliances	Waiting period in open prices	VIII, A	do	347-39-1	do
	Do	Prohibiting manufacturers from selling to buyers not agreeing to abide by provisions of this code.	VIII, E	do	347-39-1	do
	Do	Prohibiting acceptance of trade-ins	IX, 6	do	347-39-1	do
	Do	Prohibiting furnishing to buyers detailed shop drawings.	IX, 8	do	347-39-1	do
347-40	Diesel engine manufacturing.	Waiting period in open prices	VIII, A	do	347-40-1	do
	Do	Prohibiting acceptance of trade-ins	VIII, B	do	347-40-1	do
	Do	Prohibiting pooled buying	VIII, F	do	347-40-1	do
		Prohibiting manufacturers from selling to buyers not agreeing to abide by provisions of this code.	VIII, G	do	347-40-1	do
347-41	Hydraulic machinery manufacturing.	Prohibition of discounts	VIII, 2	do	347-41-1	Aug. 2, 1934
347-43	Saw mill machinery manufacturing.	Waiting period in open prices	VIII, A	do	347-43-1	Oct. 11, 1934
347-44	Cereal machinery manufacturing.	do	VIII, A	do	347-44-1	Nov. 14, 1934
	Do	Prohibiting manufacturers from selling to buyers not agreeing to abide by provisions of this code.	IX, 4	do	347-44-1	do
	Do	Prohibition of acceptance of trade-ins.	IX, 5	do	347-44-1	do

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
	Beater & Jordan and allied products—Con.						
347-45	Coal-mine loading machinery.	Prohibition of destructive price cutting.	VI, 7	Stayed in order of approval	347-45-1	Jan. 4, 1935	
347-46	Coal-cutting machinery.	do	VI, 7	do	347-46-1	do	
347-47	Mine-car manufacturing.	Waiting period in open prices	VII, 2	do	347-47-1	Feb. 5, 1935	
349	Mayonnaise	do	IX, 1	do	349-1	Mar. 21, 1934	
354	Small arms and ammunition manufacturing.	Publicity of price lists, including resale price schedules established by manufacturers.	VII, 1(b), (1), (2).	Revised to eliminate filing of resale price schedules and to make prices available to all customers.	354-1	Mar. 22, 1934	
	Do	Agreements to secure resale price maintenance.	VII, 1(b), (5).	Stayed in order of approval	354-1	do	
	Do	Waiting period in open prices	VII, 1(b), (3).	do	354-1	do	
356	Fuller's earth producing and marketing.	Waiting period in open prices	VIII, 1	do	356-1	Mar. 23, 1934	
362	Photographic and photofinishing.	do	IX, 3	do	362-1	do	
365	Sand-lime brick	do	VI, 3 (a)	do	365-1	Mar. 26, 1934	
369	Expanding and specialty paper products manufacturing.	do	VI, 2-9	do	369-1	do	
372	Shoe-rebuilding trade	All trade-practice provisions	VII	Suspended by Executive order relating to service trades.	Executive Order 6723.	May 26, 1934	85 percent of members in any locality may subsequently agree to trade practices to be approved by National Recovery Administration.
	Do	do	VII	do	A. O. X-37	May 28, 1934	Do.
	Do	All provisions of code		Members operating not more than 3 establishments in towns of less than 2,500 exempted.	Executive Order 6710.	May 15, 1934	
386	Umbrella frame and umbrella hardware manufacturing.	Price-filing provisions	VII, 1	Stayed in order of approval	386-1	Apr. 6, 1934	
391	Insecticide and disinfectant manufacturing.	Waiting period in open prices	VII, 1, 2(a), (b).	do	391-1	do	
394	Lightning rod manufacturing.	do	VII	do	394-1	Apr. 19, 1934	

398	Barber-shop trade	All trade-practice provisions	VII	Suspended by Executive order relating to service trades.	Executive Order 6723.	May 26, 1934	85 percent of members in any locality may subsequently agree to trade practices to be approved by National Recovery Administration.
	Do	All provisions of code		Members operating not more than 3 establishments in towns of less than 2,500 exempted.	Executive Order 6710.	May 15, 1934	
400	Celluloid buckle button and novelty manufacturing.	Plant operation limited to 1 shift (40 hours).	III, 10	Stayed for 90 days	400-11	Jan. 15, 1935	
403	Bleached shellac manufacturing.	Waiting period in open prices	VII, 3(a),(b)	Stayed in order of approval	403-1	Apr. 21, 1934	
406	Boatbuilding and boat-repairing.	do	VII, 1	do	406-1	Mar. 24, 1934	
410	Retail rubber tire and battery.	Prohibition of guaranty or warranty.	VII, 31	Stayed for 30 days	410-4	May 16, 1934	
		do	VII, 31	Stayed indefinitely	410-7	June 14, 1934	
412	Loose-leaf and blank book manufacturing.	Waiting period in open prices	IV, 2-9	Stayed in order of approval	412-1	May 1, 1934	
414	Bobbin and spool	do	VII, 2	do	414-1	May 3, 1934	
419	Soft limerock	do	VIII, 3	do	419-1	May 7, 1934	
420	Gypsum	do	VI, 1, 2	do	420-1	do	
421	Marble quarrying and finishing.	do	VII, 5	do	421-1	May 9, 1934	
423	Drop forging	do	VII, 4	do	423-1	May 10, 1934	
426	Paper makers' felt	do	VII, 3	do	426-1	Mar. 11, 1934	
427	Curled hair manufacturing and horse-hair dressing.	Open price filing with mandatory cost finding procedure.	VIII	Revised to conform to exhibit A of office memorandum no. 228.	427-9	Feb. 6, 1935	
432	Specialty accounting supply manufacturing.	Waiting period in open prices	VII, 1	Stayed in order of approval	432-1	May 17, 1934	
436-1	Fur manufacturing	Credit terms of sale	VIII, 14	do	436-1-1	May 19, 1934	
	Do	Prohibition of commissions to resident buyers for orders executed by seller.	VIII, 21	do	436-1-1	do	
442	Lead	Open price filing, no waiting period	VII, 2	General exemption from open price provisions.	442-3	June 27, 1934	
444	Shoe pattern manufacturing.	Waiting period in open prices	VII, 1	Stayed in order of approval	444-1	May 26, 1934	
445-1	Baking industry	do	VII, 1 (c)	do	445-1	May 28, 1934	
446	Canning	Classification of customers	VII, 2 (e)	Stayed	446-32	Nov. 16, 1934	
450-1	Dog-food industry	Waiting period in open prices	IX, 1 (c)	Stayed in order of approval	450-1	May 31, 1934	
455	Metal etching	do	VII, 2	do	455-1	June 4, 1934	
458	Wholesale confectioners	do	VII, 2	Waiting period deleted by amendment.	458-6	July 17, 1934	
	Do	Prohibition of premiums	VIII, 17	Deleted by amendment	458-6	do	
460	Preserve	Waiting period in open prices	VII, 4	Stayed in order of approval	460-1	June 8, 1934	
461	Vegetable ivory button manufacturing.	Swatch matching service to be charged at not less than cost.	VII, 14	Stayed to June 16, 1935	461-7	Mar. 19, 1935	

Trade-practice provisions in codes of fair competition which were stayed, deleted, or substantially restricted—Continued

Code no.	Name	Type of provision	Article and section	Action taken	Citation	Date	Remarks
462	Wholesale tobacco	Waiting period in open prices	Schedule I, A, 1.	Stayed in order of approval	462-1	June 9, 1934	
463	Candy manufacturing	do	VII, 1	do	463-1	June 11, 1934	
464	Cocoa and chocolate	Open-price plan	VIII, 13	Exempted sales to governmental and charitable institutions from operation of open-price plan.	464-11, amendment.	Jan. 9, 1935	
466	Retail tobacco	Waiting period in open prices	Schedule I, A (1).	Stayed in order of approval	466-1	June 19, 1934	
	Do	Minimum price provision	Schedule I, A.	Suspended with respect to towns of less than 2,500 by Executive order.	Executive Order 6710.	May 15, 1934	
467	Cigar manufacturing	Waiting period in open prices	Schedule I, A, 1.	Stayed in order of approval	467-1	June 19, 1934	
472	Warm-air register	Large purchasers exempt from filed prices.	XI, 1(b)	Deleted in order of approval	472-1	June 28, 1934	
	Do	Prohibition of sales at less than allowable cost.	VIII, 11	Stayed in order of approval	472-1	do	
469	Sulphonated oil	Waiting period in open prices and open price filing.	VII, 1	do	469-1	June 26, 1934	
	Do	Prohibition of sales at prices or terms lower or more favorable than those filed.	VII, 2	do	469-1	do	
470	Aluminum	Prohibition of (*a*) sale of aluminum ingots to subsidiaries or affiliated plant at a lower price than to competitor; and (*b*) discrimination in ingot price quotations except to meet alleged foreign competition. (See Remarks).	Art. IX	Suspended. Suspension followed the Industry's rejection of amendments proposed by National Recovery Administration.	470-13	Mar. 21, 1935	Clause actually provided that an integrated company should charge itself the same price as its competitors for aluminum ingot. Clause was not implemented and as worded was unenforceable.
471	Trailer manufacturing	Waiting period in open prices	VII, 5	Stayed in order of approval	471-1	June 26, 1934	
	Do	Prices on special trailers shall not be less than individual cost.	VII, 6	do	471-1	do	
477	Public seating	Waiting period in open prices	VII, 2	do	477-1	July 10, 1934	
479	Cold storage door manufacturing.	do	VII	do	479-1	July 11, 1934	
480	Structural steel and iron fabricating.	Entire code		Stayed entirely	480-1	do	
	Do	do		do	480-2	July 23, 1934	
	Do	do		do	480-3	Aug. 6, 1934	
	Do	do		do	480-4	Oct. 9, 1934	
485	Cotton-ginning machinery.	Waiting period in open prices	VIII, 1 (b)	Stayed in order of approval	485-1	July 16, 1934	

490	Imported date packing	do	VII, 1 (b)	do	490-1	July 22, 1934
492	Stereotype dry mat	do	VI, 5	do	492-1	July 27, 1934
507	Surgical distributors' trade.	Prohibition of style or design piracy, registration of designs.	VIII-6	This section not to supersede any State law but be supplementary thereto. In order of approval.	507-1	Aug. 24, 1934
	Do	Prohibition of any practice which shall disturb established methods of distribution.	VIII, 7	Deleted in order of approval	507-1	do
508	Wholesale plumbing and heating.	Waiting period in open prices	VIII, 2	Stayed in order of approval	508-1	Oct. 10, 1934
509	Marine equipment	do	X, 1	do	509-1	Aug. 27, 1934
	Do	Requiring addition of cost of service on sales from warehouses.	X, 5	Stayed in order of approval, but later lapsed.	509-1	do
	Do	Regulation of shipping charges and allowances.	X, 4	Stayed	509-2	Oct. 5, 1934
510	Assembled watch	60-day limitation on return of defective merchandise.	VIII, 9	60-day limitation deleted in order of approval.	510-1	Aug. 27, 1934
511	Corrugated rolled metal culvert pipe.	Waiting period in open prices	VI, 5	Stayed in order of approval	511-1	do
514	Artificial limb manufacturing.	After filing revision of prices, no higher price may be filed for 60 days.	VIII, 2	Period changed to 48 hours in order of approval.	514-1	Aug. 28, 1934
547-1	Seed trade	Prohibition of guarantees against price decline on farm seeds.	VII, 6	Stayed in order of approval	547-1	Feb. 2, 1935
	Do	Prohibition of cancelation of farm seed contracts.	VII, 7	do	547-1	do

EXECUTIVE AND ADMINISTRATIVE ORDERS APPLICABLE TO ALL CODES

Administrative order no. X-14, Jan. 23, 1934: Sales to charitable hospitals are exempt from code provisions.

Administrative order no. X-8, Mar. 3, 1934: Any industry which can show that a substantial part of its business (referred to in X-4 above) is with hospitals will be exempt from administrative order no. X-4.

Administrative order no. X-48, June 12, 1934: Notwithstanding code provisions, members of industry, in dealing with governmental agencies, may quote prices and terms as favorable as those permitted to any commercial buyer for like quantities; may quote definite prices and terms for definite or indefinite amounts and for periods not to exceed 3 months, unless the code in question permits a longer period; may make quotations to become effective within 60 days after the opening of bids; may quote f. o. b. point of origin and/or destination. This does not affect open-price and cost-protection features of codes.

Executive Order No. 6606-A, Feb. 17, 1934; supplementing Executive Order 6355: No provision shall be construed or applied so as to make it a violation to sell to or through any cooperative organization, or to prevent cooperative organizations from receiving and distributing discounts, commissions, rebates, or dividends given to purchasers for purchases in wholesale quantities.

Executive Order No. 6767, June 29, 1934: When a code provides for price filing before quotations may be made, bids can be submitted to Government agencies at prices 15 percent below the filed prices. If, upon complaint, National Recovery Administration finds that this 15-percent tolerance will result in destructive price cutting it may reduce such tolerance to an amount not less than 5 percent.

Administrative order no. X-98, Oct. 12, 1934: Nothing shall prevent members of any industry from paying brokerage commissions to such cooperativs as perform the brokerage functions.

OFFICE MEMORANDUM NO. 228, JUNE 7, 1934

States National Recovery Administration policy on (1) open-price filing: Price terms to be filed with confidential agent of code authority, all members to receive notice of prices filed, which take effect without waiting period; (2) costs and price cutting: On complaint that any filed price constitutes destructive price cutting, investigation and adjustment by code authority is authorized; National Recovery Administration, acting on research and planning report to make final ruling if either party to complaint declines to concur in code-authority ruling. Minimum prices may be approved during emergency period declared by National Recovery Administration; (3) accounting provisions: Appropriate provisions of cost accounting should be recommended by codes; but none to be obligatory or to establish arbitrary differentials or uniformity in costs or prices; (4) pending codes and codes hereafter submitted shall be adjusted to these policies.

The CHAIRMAN. The next witness is Mrs. Emily Newell Blair.

STATEMENT OF MRS. EMILY NEWELL BLAIR, CHAIRMAN CONSUMERS' ADVISORY BOARD

(The witness was duly sworn by the chairman and testified as follows:)

Mrs. BLAIR. I am chairman of the Consumers' Advisory Board.

Mr. Chairman, Mr. Blaisdell has stated so fully almost everything in connection with the position of the Consumers' Advisory Board and given such a fund of information that I hesitate to take any time at all, but I would just like to give a background of the consumers' organization work. That picture perhaps would be helpful in determining any future division or pattern that this act may take.

Senator COSTIGAN. Mrs. Blair, how long have you been in your present position?

Mrs. BLAIR. I have been chairman since February 18, I think.

Senator COSTIGAN. And how long have you been connected with the Consumers' Advisory Board?

Mrs. BLAIR. I was on the board from almost the first organization of the Board, and, since I was a resident in Washington, I was in touch with the work and assisting in a voluntary capacity.

Senator COSTIGAN. Continuously since its organization, practically?

Mrs. BLAIR. Yes. And on the executive committee during the whole time.

I wish, first of all, to make a statement concerning the attitude of the Consumers' Advisory Board toward the National Recovery Act and the activities of the National Recovery Administration.

The Consumers' Advisory Board is sympathetic with the purposes of the act. It approves the effort to effectuate these purposes through codes of fair competition. At the same time the Board has been one of the most articulate and sternest critics of certain policies of the National Recovery Administration as embodied in the codes. The two positions may seem contradictory. The Board does not think so.

The preamble to the Recovery Act sets forth among the purposes of the act as follows: To remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; to promote the general welfare by promoting the organization of industry for the purpose of cooperative activity among trade groups to promote to the fullest utilization of the present productive capacity of industries; to avoid undue restriction of production (except as may be temporarily required); to include and maintain united action of management and labor under adequate governmental sanctions and supervisions; to eliminate unfair competition; to increase the consumption of industrial and agricultural products by increased purchasing power; to reduce volume of unemployment; to improve the standards of labor.

The effectuation of these purposes, the Board believes to be of benefit to the consumer. The code mechanism it thinks capable of utilization to that end. Whenever, however, the National Recovery Administration has formulated policies or codes have been submitted

which, in the Board's opinion, tended to obstruct these ends, the Consumers' Advisory Board has opposed them. What the Consumers' Advisory Board has opposed was not the act but what it considered to be a perversion of the spirit and intent of the act.

These policies and provisions which the Board has consistently disapproved have already been called to the attention of the committee by Mr. Blaisdell, chairman of the executive committee of the Board and director of the Consumers' Division of the National Emergency Council. I would not be understood as minimizing, in the least, the detrimental effect on the consumer of the provisions in codes which Mr. Blaisdell cited. But any true and complete survey of the record of the National Recovery Administration also must contain some evidence of the constructive work of the Consumers' Advisory Board.

One of the most important fields in which the Consumers' Advisory Board has been of service to consumers has been in the protection of the consumer cooperatives from code provisions which were couched in such terms as in some cases to completely eliminate the possibility of distribution to consumer cooperatives. A problem was first recognized in an acute form in the petroleum industry code. One of the important fields in which consumer cooperatives have been of the most service has been in the distribution of gasoline to farmers and others. In the summer of 1933, when the petroleum code was first before the administration, provisions in that code threatened to kill off these cooperatives completely. Mrs. Rumsey took up their cause and, against great odds, secured a provision in the code protecting farm cooperatives. In October, the Presidential order excluded all cooperatives in a similar exemption.

The action in regard to the Petroleum Cooperative was but the beginning of a successful fight led by the Board to protect consumer cooperatives from various technical discriminations under the codes. The following types of exemptions have been used and every opportunity is now afforded for their development:

(*a*) Executive orders have been issued granting exemptions to permit farm cooperative, and other consumers' cooperatives, to pay patronage dividends, etc.

(*b*) Executive order has been issued to define consumer cooperatives in order to insure the benefits of exceptions to legitimate consumer cooperatives and to prevent false use of privileges by commercial concerns.

(*c*) Further Executive order permits cooperatives to collect brokerage and other fees usually collected by distributing agents whom they supplant when and as the cooperative performs a distributing service otherwise performed by such agent.

The most important change in policy affecting consumers' interests which has taken place within the National Recovery Administration, as you know, is stated in office memorandum 228.

In presenting this evidence, I wish to call your attention to a fertile fact which should not, in any consideration of the social usefulness of the National Recovery Administration be overlooked.

The appointment of the Consumers' Advisory Board in the National Recovery Administration was the first governmental recognition that the consumers' interest in the organization and direction of industry is justification for his needs to be taken into consideration

where policies affecting industry are formulated. That this had not hitherto been recognized was natural. Under the old American economy it was assumed that the consumer could look after himself in the market place. It is still so held by those wishful thinkers who refuse to face the realities of the modern business world. Those realities are that with the development of wide markets and large industrial units, the perfection of sales technic, the organization of business on a national scope, and the control of prices by understanding, the opportunity of the consumer to protect himself in the market place has steadily lessened. Even before the National Recovery Act the plight of the consumer was becoming a problem from the standpoint of the consumer. Yet no efforts were made to solve it. Every governmental approach to industrial problems was from the producer's point of view: The little man was to be protected from the big business. Trade practices should promote fair competition, with "fairness" applying not to the consuming interest but as between different producing interests. The assumption may have been that this would protect the consumer, but it was not explicitly taken into account when the arrangement was made.

When the National Recovery Administration undertook to bring about agreements between management and labor, it came face to face with the realization that management and labor could not be permitted to come to agreements which affected the interest of the consumer without the consumer, or some representatives of his, having something to say about the agreements. As a result there was set up in the National Recovery Administration a pressure group to represent the consumers—equal in authority to those other two pressure groups: The Industrial Advisory Board and the Labor Advisory Board. This, I wish to repeat, was the first formal recognition anywhere that the consumer has a definite interest in the organization and direction of industry.

I wish to make this point merely because it was brought in the hearing the other day that the Consumers' Board had no chief, as if that was something contrary to the Industrial Advisory Board and the Labor Advisory Board. And I will discuss that a moment later.

Any adequate evaluation of the National Recovery Act must, it seems to me, take into consideration the fact that the administration itself—and, so far as I know, without any pressure from outside—was the one to recognize the necessity for making articulate within its organization representatives of the consumer.

It is true that the function of this Board was limited to that of giving advice. But so was the function of the Industrial and Labor Advisory Boards. The differences between the power and effectiveness of the Consumers' Advisory Board and these other two—that speaking for industry and that speaking for labor—was not due to any difference in the function. It was the result of a situation. Back of these two other boards were organized articulate interests outside the National Recovery Administration. Behind the Industrial Advisory Board were the various trade organizations which knew what they wanted and were organized to speak out and demand it. Behind the Labor Advisory Board were the labor organizations which also knew how and when to speak up. Back of the Industrial Advisory Board was an executive department of the

Government created to look after the interests of industry, the Department of Commerce. Back of the Labor Advisory Board, the Department of Labor. The Consumers' Advisory Board hung, as it were, in mid-air.

Not only were there no organized, articulate groups of consumers to back up its demands, but nowhere in the Government existed any agency vested with the major duty of serving the welfare of the consumer. Moreover, there was confusion in the minds of both industry and labor, as well as the public, as to who the consumer is. The argument heard—the Consumers' Board heard it often—is, that every consumer is also a producer, that consideration of the interest of every producing group will consequently safeguard the consuming interest. It is true that in our society there is no consuming group which is to be distinguished from the producing groups. But it does not follow that the consumer interest and the producing interest are identical.

For example, if any particular industry receives a grant of privilege, it can benefit at the expense of all the rest. If all producing groups are given the same privileges, the privileges cancel each other. I think that before this you have heard that discussion in regard to the tariff. Such a cancelation means that all, in reality, are worse off. The reason is clear. A group can only benefit if it gets more than it gives. If all get the same increase, everyone is giving less. This means that total production is decreased. Decreased production at more profit may be to the producers' interest. It is not to the consumer's. His interest lies in increased production and lower unit costs.

In addition to the lack of an organized constituency, such as industry and labor had, and the confusion as regards the identity of the consumer, the Consumers' Advisory Board was handicapped by the lack of any formulated, generally accepted policy for consumer protection, as, for example, the policies against monopoly for the benefit of small producers as formulated in the antitrust laws.

In undertaking to represent the buyer's side of the market, before the N. R. A., the Board had largely, therefore, to interpret its own task. The prevailing impression seemed to be that by some legerdemain the Board would be able to say what was, and what was not, a fair price for goods. Your committee, of course, realizes that there was not available to the Consumers Advisory Board, or any other agency, the factual information necessary relative to price trends and production costs, necessary to such pronouncements, were they advisable. Throughout its work the Board has been hampered by the unavailability of data on prices and costs. Lacking them it was forced to develop policy on the basis of past experience.

The policy adopted by the Board was not a narrow one. The Board did not believe that it should insist upon the lowest possible price to the consumer, whatever the consequences. It recognized that prices driven down by depressing labor standards, by impairing the quality of goods, by practicing misrepresentation or by squandering precious natural resources, are antisocial. It expressed its belief in conservation, in honest trade practices, in quality standards, in decent wages, hours, and working conditions. The Consumers' Advisory Board believes, however, that these social benefits to society should not be bought at too high a social price. It does not

think, for example, that in return for them, either fairness or expediency requires that industry should be permitted to agree on practices which would enable it to limit output and so fix permanently upon the American people the present standard of living. Nor does it think it necessary that it should be permitted to do so in order that society may obtain these benefits.

The standard of living for masses of our people is still shamefully low. Yet there are available the machines, the labor, the technical knowledge to produce the goods which we consumed before the depression. Our need is to utilize these rather than to stabilize production at something like present low levels. Moreover, we need to continue in the future the technical progress which has been raising American standards of living for a century. Devices and agreements that arbitrarily close the door on new processes, new ideas, new methods that tend by bringing down unit costs to make goods available at ever lower prices would inevitably prevent such progress. The incentive under our present system to induce industry to seek these improvements is the need to find customers for their products. In other words, improvements in production is stimulated through open competition, industry with industry, for a market for its goods. The desirable social end, the Board holds, is increased production at lower unit costs and consequent increased consumption at lower unit prices.

Senator GORE. Lower prices to the consumer?

Mrs. BLAIR. Yes.

In formulating its policy, therefore, the Consumers' Advisory Board has taken the position that, above the floor fixed by increasing labor costs, honest labeling of goods, conservation of natural resources, there should be active competition and price freedom.

In applying this policy the Consumers' Advisory Board has consistently opposed those provisions in code which either directly or indirectly tended to fix prices.

Insofar as I have been able to discover, this is the first formulation of consumer policy by a governmental agency. In formulating this policy, as well as gathering data to support it—to present at the several price and policy hearings of the National Recovery Administration—the Board has, I believe, performed a social service of some value. In the long view, this formulation of consumer policy and its use in any future development of consumer protection policy may become of such benefit to the consumer as to compensate for any penalties he has suffered from high prices resulting from the codes.

The formulation of these policies, the studies which have been read into the record as to price fixing and other monopoly-making practices and devices were made possible, it must be noted, through the effort of the National Recovery Administration were by no means one and the same thing. It is true that the recommendations of the Board based on these policies were in all too many instances ignored. But I would ask you to view the Consumers' Board history as a whole.

Senator COSTIGAN. Were they ignored in all cases in the first codes in which price fixing was attempted?

Mrs. BLAIR. No; I think there were exceptions. But I want to bring out the history of the Board, because I think it has a very

decided interest to the committee in formulating its policy in the new act.

The National Recovery Administration was frankly acknowledged as an experiment. Whatever may be said about it, never can it be said to have been static either as to policy or mechanism. Any fair evaluation of it must take into consideration the fact that not only is it experimental but that it profits from experience. To mention only a few instances of its changes in policies: The National Recovery Administration has withdrawn its support from some of the more harmful price provisions. Example:

The concept of an average or reasonable cost of production to serve as a minimum price floor in an industry has been abandoned. Likewise, mandatory cost formulas and cost systems, are today counter to National Recovery Administration policy, as are provisions for waiting period before the effective date of prices filed under an open-price plan.

Many of those things for which the Consumers Board vainly contended in the early days of the National Recovery Administration later became matters of established policy. Example:

Our contention that no production control should be permitted without Government supervision has been sustained. Limitations of machine-hours is being questioned and prohibition of new capacity by competition is no longer acceptable to policy.

Many practices which were permitted in the earlier codes have been refused to more recent applicants. Example:

Resale-price maintenance provisions, mandatory customer classifications and plans for the allocation of production have been denied to recent applicants.

Some of the provisions which were granted required the formulation of a definite plan for approval by the Administration; in some cases, this approval has not been granted. For example:

The merchandising plan provided for in the asphalt shingle and roofing industry code was denied administrative approval when submitted. Many uniform cost accounting systems authorized in connection with no-selling-below cost provisions, have never received the necessary National Recovery Administration approval to become effective. Again, other devices, permitted only during a limited trial period, have not been renewed. For example:

The mandatory labor mark-up in the Paper-Distributing Trade Code was not extended at the termination of the period of temporary approval. The request for permanent approval of the processing costs permitted under the paint, varnish, and lacquer code was denied by the administration. The right of the code authority for the Iron and Steel Industry to fix prices was discontinued. Sanction for mandatory freight equalization and the use of fixed elements of cost in the paper-bag manufacturing industry ended when the code provision lapsed and was not renewed.

Still others have given rise to much difficulty in operation, so that their application has been stayed. Notably, provisions for a waiting period in connection with open-price plans have been stayed in all codes approved after the January 1934 price hearings. Various restrictions in the Business Furniture Code concerning sales to Government agencies have been modified by stays and by administrative

orders. A requirement for mandatory customer classification or channels of trade in the cement industry code was stayed because of difficulty in operation. An essentially similar provision in the retail lumber code was likewise modified by a stay.

Again, in a few cases, undesirable provisions have been eliminated by amending the codes. The model mark-up in the builders' supply code was removed by amendment, and a recent amendment eliminated all of the trade practice and pricing provisions in the plumbing fixtures industry code, including many which had been criticized by the Consumers' Advisory Board.

Moreover, there had been changes in the administrative set-up of the National Recovery Administration which have enabled representatives of the Consumers Advisory Board to be more effective in protecting the interest of the consumer. Whereas, in the beginning, the consumers' interest and viewpoint could only be presented as "advice" to administrators whose minds were often already made up, and only after policy was formed, now two members of the Consumers Board sit upon the advisory council where conflicting interests involved in decisions of policy, those of industry, labor, and the consumer, are presented and discussed. Thus, the Consumers Board not only has an opportunity to present the case for the consumer before policy is agreed upon, but has also an opportunity to argue its points with the representatives of industry and labor. And we hope in some instances to convert them.

The result is to quote again from a staff report.

ARCHITECTS DIVISION OF THE CONSTRUCTION CODE

This proposed code tried to bring under its roof all who might carry on the professional function of architectural planning. The Consumers Advisory Board pointed out that such a code was not in harmony with the principles and policy of N. I. R. A. The code attempted to regulate nonmembers of the industry, contained standard charges and other similar restrictive provisions. The code was not accepted as extending beyond the administrative organization of the construction code and because it contained clauses having an elaborate control of fees and other limitations with clients.

BOLT, NUT, AND RIVET INDUSTRY

This code, as originally submitted, contained an elaborate price-control structure which was considered in detail on a policy basis and turned down. A future draft amending many of the specific provisions in regard to price control was returned to the Advisory Board for review and detailed comment before final action should be taken.

BUSINESS FURNITURE

Resale price maintenance: The Business Furniture Code Authority proposed an amendment which it believed to fall within the sphere of powers already granted by the code. The Consumers Advisory Board brought to the attention of the N. R. A. the resulting effect on the price structure if an amendment permitting resale price maintenance were permitted. The N. R. A. took the

position that whether or not the right to retail price maintenance was implied in the code, the matter must be brought to a public hearing, and the problem of the control of price structure in the industry be reopened before any amendment could be considered.

BUSINESS FURNITURE, STORAGE, AND EQUIPMENT FILING SUPPLY CODE

In connection with certain mandatory provisions in regard to open-price filing, the code authority sent out a statement to members of the industry indicating that trade-in allowances on used goods should be at the rate of 15 percent of the list price. When used material was reconditioned, it should not be sold at less than 85 percent of the list price. This recommendation was sent out under a form whereby members of the industry were likely to interpret it as a compulsory ruling of the code authority. This was a usurpation of power by the code authority, and N. R. A. promptly took the ground that while this was an extra code action, the Administrator must deny its use and examine the other activities of the code authority to insure that they were in line with the provisions of the code. When this case was brought to the attention of the N. R. A. by the Consumers Advisory Board, checks were set up to prevent the recurrence of such activities on the part of the code authorities.

CLOCK MANUFACTURING INDUSTRY—PROPOSED CODE

The clock manufacturers wrote into their code most of the provisions of office memorandum no. 228, which provides for open-price filing under adequate safeguards. It provided, however, that filed prices should be open to members of the trade, but not to customers. N. R. A. action permitted them to have open-price filing only on condition that prices filed should be open to customers as well as members of the trade. Other provisions in this code providing for uniform credit and other similar terms were not accepted. This action is typical to the action taken during last December and January under the way in which price policy is applied at the present time.

CRUSHED-STONE, SAND, AND GRAVEL INDUSTRY

Series of districts under this code asked for uniform terms of credit, such as resale price maintenance, prohibition of announcement of new prices before they should become effective, specified size of load for filing prices, also the weight basis for filing prices, laying down limitations on taking up orders and contracts, providing that if on certain hauls freight rates should be reduced, delivery prices which include freight on these hauls should not be reduced by the full amount of the freight. This is not a complete list, but a sample of the provisions which were turned down on the basis that they went beyond code-authority power and could not be supported by the N. R. A.

There also sits now upon the board which makes the final decisions as to policy and administrative matters a member of the Consumers' Advisory Board. Thus the viewpoint of the consumer and policies for his protection urged at the source of authority.

In addition it is now possible for the Consumers' Board itself to take the initiative in demanding revision of codes.

This does not, of course, guarantee that revision will eliminate provisions it holds undesirable. But it does give the Board more opportunity to work for the protection of the consumer than it formerly had.

I would not be understood to say that the consumer has secured representation on administrative or policy boards adequate to the interest he has at stake. I wish only to make the point that with the changes in the N. R. A. resulting from experience the importance of the consumer as a party with an interest in the organization of industry has been increasingly recognized.

Through experimentation the N. R. A. has developed the beginnings of a mechanism through which the consumers' interest in the organization and direction of industry may be made articulate.

The National Recovery Act was designed to remedy certain evils in our industrial system. Those evils had existed before the N. R. A. Were the N. R. A. and its codes abolished they would remain to be solved. Some measures to reduce or overcome them would be necessary. Any new mechanism or agency set up to put these measures into operation would itself be subject to a period of experimentation. In view of these facts it would seem to be more economical of time and money to develop further this mechanism, rather than to scrap it in favor of some other experiment.

Especially is this so when by revision of the act it is possible to eliminate some of the evils which have obtained under the present act and provide safeguards for the protection of the consumer.

Unfair competition, for example, could be definitely defined in the act as competition unfair to consumer, as well as that unfair to competitors.

The act could—and should—authorize the creation of some agency charged with the task of safeguarding the consumers' interest. Although the Consumers' Board has been performing this function, there is nothing in the present act providing for any agency in the consumer interest or even for representation of consumer interest in the administration itself. The Consumers' Advisory Board believes that in the absence of any governmental agency entrusted with the interests of the consumer, Congress should provide for the appointment for such an agency by some official of the Government, perhaps by the President himself.

In addition to authorizing the establishment of some agency within the N. R. A. to represent the consumers' interest, the act could well provide that the representation of the consumer interest should at least equal that of industry and labor on all boards charged with administrative powers.

This brings me to the code authorities about which I wish to say a few words.

These bodies are not mentioned in the present act, but they are nevertheless the agencies through which the actual administration of the codes is carried on. The privilege of financing their activities by means of collecting money from members of the industry vests them with the power to tax. The money which pays for this must come, of course, out of the consumer's pocket.

These code authorities are really public bodies. They exist only by virtue of the Recovery Act. Their composition and their powers should accordingly be definitely circumscribed by law, and their com-

position should be appropriate to their public character. The exercise of powers which affect both labor and the consumer cannot, the Consumers' Board believes, safely be entrusted to management alone. Code authorities might be organized in more than one way. Administration of the code could be in the hands of public officials, with the advice of an industry committee, as in the case of the petroleum code. Or representatives of various interests—consumers and labor, as well as business—might sit together as the code authority. So far as concerns labor but not consumers, this is being done in some of the garment trades.

Senator CLARK. At the present time these code authorities, for the most part, have authority to fix their own salaries, fix their own expenses, and levy a tax in the name of the United States on industries for the support of the code authorities, do they not?

Mrs. BLAIR. No; I do not think so. They are subject to review by the administrative officer of the National Recovery Administration.

Senator CLARK. Has there ever been an instance in which the National Recovery Administration has cut down the salary of the code authority, which the code authority fixed?

Mrs. BLAIR. Certainly. There has been a great deal of discussion and adjustment.

Senator CLARK. I do not mean to interrupt you.

Mrs. BLAIR. I am glad you did. It shows me you are interested in my speech or you would not interrupt me.

But most of the code authorities still represent only business, and do not yet contain even a modest beginning of representation of other interests, such as the inclusion of a single labor representative and a single consumer representative.

Senator BARKLEY. Do you say that you think the representation on the code authorities ought to be equal for the public?

Mrs. BLAIR. Not on the code authority, but on the administrative policy-making boards. For instance, in the present National Industrial Recovery Board there are 2 for labor and 2 for industry, and there are 2 that represent the public interest. It might be possible that the interest of labor and industry might be in such agreement as to entirely outvote the consumer.

Senator BARKLEY. You could figure out any combination.

Mrs. BLAIR. It is a question which combination would be more advantageous.

Senator CLARK. We had an example this morning of the mechanical rubber goods industry, in which it appears that the code authorities, made up of three members, all of whom were officials of the Rubber Manufacturers Association. That certainly is not very conducive to the interests of the public or getting a fair deal there, or the interests of labor.

Mrs. BLAIR. That is the code authority. I was speaking of the National Industrial Recovery Board.

Senator CLARK. I was speaking of the code authority, too.

Mrs. BLAIR. I was speaking of the National Industrial Recovery Board. I do not think we should go so far as to say that we should have equal representation on the code authority of industry and labor.

Senator CLARK. It is not a general practice to have any consumer representation on the code authorities at all, is it?

Mrs. BLAIR. No.

Senator COSTIGAN. Do not the representatives of the public undertake to pay regard to the welfare of consumers?

Mrs. BLAIR. We think so. We hope so. Yes; they do in fact. One of the present public representatives is a member of our Consumers' Board, Dr. Hamilton, and they naturally tend to take the over-all view, which is the consumers' view.

The codes offer one real possibility for the protection of the consumer interest which is as yet far from realization. I refer to the establishment of quality standards and the requirement of informative labeling. Objective standards of quality must be established if the modern market place is to function properly. They serve both to protect the buyer against misrepresentation and fraud and honest business against the unfair competition of short weight, adulteration, and shoddy merchandise. The law should include among its fundamental purposes the promotion of informative labels and commodity standards and should direct the administration to seek these ends by appropriate code provisions. The need for standards has been formally acknowledged in many of the codes and recognized within the administration. Practical progress toward their adoption and enforcement, however, has proceeded at a snail's pace.

In conclusion I should like to point out that, whatever may be the final judgment of this committee on the N. R. A., the problems of the consumer under our highly organized industrial system will remain with us. He faced monopoly before the Recovery Act was written into law. He will face it in the future, without or with the codes. If the National Recovery Act has done no other service, it has done this: It has brought out into the open practices and conditions affecting his interest which already existed. It has brought him face to face with the complexity of his problems. For myself, I believe that it has done more. It has accumulated a great body of information, fact, and experience which he needed before he could approach them realistically. It has given him an opportunity to express his interests, recognized him as a party with interests equal to those of labor and industry in the organization of industry. What is needed now is to improve the working of the code mechanism so that the N. R. A. may really operate to effect those purposes set down in the preamble to the act.

Senator COSTIGAN. Have you or the Consumers' Advisory Board decided if and where the Federal Trade Commission with its jurisdiction to deal with unfair competition may effectively help consumers?

Mrs. BLAIR. I do not think we have gone into that, Senator. We have been very closely in touch with various members of the Federal Trade Commission. They have been very helpful to us. Their purposes, I take it, are the same, but theirs is indirectly the purpose, and ours is a direct purpose of serving the consumer.

The CHAIRMAN. Are there any other questions of Mrs. Blair?

(No response.)

Mrs. BLAIR. Thank you very much.

The CHAIRMAN. Thank you, Mrs. Blair.

The committee will recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:30 p. m., a recess was taken until Tuesday, Apr. 2, 1935, at 10 a. m.)

INVESTIGATION OF NATIONAL RECOVERY ADMINISTRATION

TUESDAY, APRIL 2, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:05 a. m. in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Clark, Black, Gerry, Couzens, and Hastings.

The CHAIRMAN. Mr. Tracy, I understand that you are here from out of the city and will take about 15 minutes to give your testimony, therefore, we will put you on first.

STATEMENT OF GEORGE S. TRACY, PRESIDENT PERKINS-TRACY PRINTING CO., ST. PAUL, MINN.

(The witness was duly sworn by the chairman and testified as follows:)

Mr. TRACY. I am the president of the Perkins-Tracy Co. of St. Paul, Minn.

We are appearing before this committee in protest against persecution suffered by our establishment at the hands of the code administration of St. Paul, Minn., which is a branch of and was designated by the United Typothetae of America, the National Code Authority for the relief of the printing industry.

In our opinion the naming of a National Trade Association as a code administrative agency is not only unsound, but detrimental to the best interest of an industry.

We are not appearing as a critic of the National Industrial Recovery Act or of the Code for the Printing Industry. The code has assisted to a limited extent in the elimination of cutthroat competition suffered by the industry for a number of years most noticeable during the current depression.

The provisions of the code did not affect our establishment so far as labor provisions were concerned, because we were then and are now operating a union plant employing only members of the printing trades unions, observing wage rates and other conditions more stringent than those required under the code.

The Perkins-Tracy Co. has never been charged with unfair competition with other printing concerns, and our financial condition was at stable as the average printing establishment. The code administration agency did not concern themselves in any manner with the operation of our establishment prior to July 1934.

In July 1934, for the first time the Perkins-Tracy Co. entered bids for the printing for the State of Minnesota. When our bid was entered the code authority demanded that our concern submit its figures to the cost accounting bureau of the St. Paul Typothetae for approval before submission to the commission of administration and finance of the State, the committee charged with letting contracts for State printing.

Believing that the accounting bureau of the Typothetae was operating in the interest of a monopoly and being used to prevent any business concern not especially favored by the bureau from securing any work for the State, the Perkins-Tracy Co. refused to submit its figures to that bureau.

Our refusal was also predicated upon the knowledge that our experience proved the bid to be proper, representing not only cost of production but a reasonable profit. For years we had observed a cost-finding system, which was adequate for our needs. Our experience since being granted the contract for State work proves that that system was sufficient. Notwithstanding this experience, the cost accounting bureau and the code authority maintains that the basis of our bid was not in conformity with code requirements and that we are in violation of the Graphic Arts Code.

Senator KING. What particular provision did they contend that you had violated, what particular breach did they contend that you had committed?

Mr. TRACY. Sold below cost. I will come to that a little further on.

We have been continually harassed in the operation of our business since the bids were opened July 9, 1934, as will be seen from the following list of accounts taken:

1. Request for injunction: The district attorney requested by the executive secretary of the St. Paul Typothetae to take some action to prevent the Perkins-Tracy Co. from securing the contract for State printing.

2. Attempts to prejudice bonding company: Efforts made by some unknown competitor for the purpose of inducing the National Surety Corporation, a bonding company, to cancel the bonds issued to the Perkins-Tracy Co. and thereby prejudice their bid to the State of Minnesota for State printing by giving the insurance agency false information that the Perkins-Tracy Co. was in violation of the Graphic Arts Code by submitting a bid not in conformity with the requirements of the code.

3. Complaint filed: Formal complaint lodged with the State compliance director against the Perkins-Tracy Co. by Herman Roe, executive secretary for the code administration agency charging violation of the code by submitting bids for the printing of various classifications of printing for the State of Minnesota, quoting prices not in accordance with any method of cost finding permissible under or approved by the Graphic Arts Code, quoting price in said bids below cost of production as ascertained by a cost finding system and principles of accounting declared by the National Code Authority.

4. Attempts to prejudice State officials: Protest against letting the bid for State printing to the Perkins Tracy Co. made to State officials by Mrs. Anna Dickie Olesen, State N. R. A. compliance director, thereby giving confidential information to agencies other than the National Recovery Administration of a complaint on file before such

complaint had been proved, and the respondent found guilty of the charge.

5. Loan denied because of unproved charges: An application for a loan denied on December 19, 1934, by the Federal Reserve Bank of Minneapolis on the basis of a report by the industrial advisory committee questioning the ability of the Perkins-Tracy Co. to adequately handle the volume of work anticipated by reason of the contract for the State printing. It is evident that the complaint filed and being a matter of record was responsible for this refusal.

Senator CLARK. I understand that the State compliance director tried to knock you out of that contract simply because you refused to build up your cost by putting in items that were unwarranted as a basis of cost.

Mr. TRACY. Because we did not have our price approved by the code authority.

Senator CLARK. Was it not based upon a refusal to build up your costs?

Mr. TRACY. Yes, sir.

Senator KING. They wanted you to raise your costs so as to increase the bid, was that not it?

Mr. TRACY. Yes, sir.

Senator KING. Although you were satisfied with the profits which you would make, and you were paying labor the prices which you had paid for a long time at the union scale?

Mr. TRACY. Yes, sir.

Senator CLARK. In other words, your prices were theoretically to be based upon your costs, and they demanded that you pad your costs and necessarily raise your price?

Mr. TRACY. Yes, sir.

6. Costs of investigation assessed: Five days from March 22, 1935, given by State N. R. A. compliance director to adjust our operations to conform with the requirements of the Graphic Arts Code and to pay the assessed costs of the investigation.

PREDETERMINATION OF VIOLATION OF THE CODE

The cost accounting bureau of the St. Paul Typothetae, together with the executive officers of the organization presupposed, because we did not submit our figures for approval, that our prices were below the code requirements, without having knowledge as to the basis for such prices and having only a comparison of our bids with the bids of three other concerns as a determining factor.

On the supposition that we were offering to sell below cost, these persons immediately approached the district attorney and demanded that he take immediate action to prevent our concern from securing the contract upon which we had entered a bid. The district attorney refused to entertain the idea and to take the action requested. If the code administration agency was as zealous in observing the National Industrial Recovery Act as they have been in their attempts to require the Perkins Tracy Co. to comply with their interpretation of the Graphic Arts Code, they would have known that the district attorney had no power in the enforcement of violations until after the case had been heard and decided by the compliance division of the N. R. A.

Senator KING. They sought to have you brought into court before there had been a determination by the compliance board?

Mr. TRACY. Yes, sir.

Senator KING. Let me ask you a question right there. Where is your place of business?

Mr. TRACY. St. Paul, Minn.

Senator KING. Do you have business outside of the State? I mean a business house?

Mr. TRACY. No, sir.

Senator KING. You produce all of your work there in St. Paul?

Mr. TRACY. Yes, sir.

Senator KING. It is intrastate purely, then?

Mr. TRACY. Yes, sir.

Senator KING. A manufacturing plant, so to speak, within the State?

Mr. TRACY. Yes, sir.

Senator KING. And yet they assumed jurisdiction over you and tried to get you into the courts and by means of injunction?

Mr. TRACY. Yes, sir.

Senator CLARK. This is a contract with the State of Minnesota, as I understand?

Mr. TRACY. Yes, sir.

Not receiving the cooperation expected from the district attorney, the next move, apparently by someone directly concerned, was to approach the bonding company in an effort to prejudice the insurance company against Perkins-Tracy Co. in order to prevent the issuance of the necessary bond to cover the contract.

INVESTIGATION BY THE INSURANCE COMPANY

On July 19, 1934, Mr. Thomson of the Joyce Insurance, Inc., St. Paul, advised Mr. Frank Tracy that someone had informed him that the bid of the Perkins-Tracy Co. for certain State printing contracts was too low and not in conformity with code requirements. Mr. Tracy also was advised that the insurance company had been informed that he did not have a cost-accounting system, and accordingly was not in a position to make, or substantiate a proper bid within code requirements. It is evident from this information that someone directly concerned either as a competitor or as an agent of a competitor, or the same people who in other ways had attempted to prevent the Perkins-Tracy Co. from receiving the contract, was making every effort to prejudice the bid of the Perkins-Tracy Co. and prevent their securing the contract either through the weight of unsupported charges or by preventing necessary credit or preventing necessary insurance necessary to comply with the State requirements. The statements made by Mr. Thomson were verbal, but confirmed by a letter from the attorneys for the Perkins-Tracy Co. and never denied by the insurance agency.

COMPLAINT FILED WITH COMPLIANCE BOARD

The formal complaint filed with the State N. R. A. compliance director on July 20, 1934, by Herman H. Roe specifically charged violation of the Graphic Arts Code by offering to sell printing below

cost of production as ascertained by a cost-finding system of accounting declared by the National Code Authoirty.

Senator KING. Who did you say Herman H. Roe is?

Mr. TRACY. He is the code authority.

Senator KING. In Washington?

Mr. TRACY. In St. Paul.

Senator KING. Where is the head of the code authority?

Mr. TRACY. Mrs. Anna Dickie Olesen is the N. R. A. compliance director.

Senator KING. There is a code. Who are the officials of the code, and the deputy administrator?

Mr. TRACY. Do you mean in Washington?

Senator KING. Of the organization, if you know?

Mr. TRACY. I do not believe I could answer that.

Senator KING. Where does Mr. Herman Roe live?

Mr. TRACY. St. Paul.

Senator KING. Did you have any correspondence with the code authorities, I mean the head of the code authority, or were your dealings entirely with the local?

Mr. TRACY. With the local, until they finally sent it on to Washington, too. We had hearings in Minneapolis. I think I will cover that as I read further on.

The Code for Graphic Arts Industry, article III, section 26 (a) provides:

> Each National Code Authority, within 30 days after the effective date of this code, shall declare for its industry, uniform principles of accounting and cost finding which shall be subject to the review of the National Graphic Arts Coordinating Committee and the Administrator.

The word "review" as used in this section reserves to the Administrator the right of approval or disapproval.

To our knowledge no cost-determination schedule has been approved by the Administrator, except that certain unenforceable schedules have been approved as "guides of fair value" to be used only as such.

So far as we know and as we are advised, the N. R. A. has not approved any cost-finding system declared by the National Code Authority.

COERCION

The complaint was filed as a coercive measure rather than to require compliance with certain interpretations of the Graphic Arts Code.

We charge collusion between the State N. R. A. compliance director and the complainant, Herman H. Roe. This collusion was entered into prior to the filing of the complaint and existed at the time the State N. R. A. director reported the substance of the complaint to the officials in charge of State printing.

When we were called to a hearing on this case on August 28, 1934, we found the complainant sitting in a dual capacity of complainant in the first instance, and presiding as an officer of the compliance board. Mr. Roe was not then and is not now a member of the compliance board, and had no right to sit as a member of the board.

At the hearing on August 28, the complainant in answer to a question as to what, in his opinion, would be the proper adjustment

of the complaint replied that the only adjustment would be for the respondent to relinquish the contract for State printing and admit the charges as correct.

Herman Roe is the executive director of the eleventh zone federation, the code authority for the eleventh zone.

Mr. Repke, secretary of the St. Paul Typothetae, when the complaint was filed, stated to Joseph Lathert a few weeks prior to March 26 in substance that:

> Had the officers (of the Perkins-Tracy Co.) shown any sense they could have received $10,000 for their contracts with the State of Minnesota as the whole matter of these contracts had been fixed and there would then have been no trouble or difficulty of any kind with the code authority.

Senator KING. What did he mean by that, that the contract had been fixed?

Mr. TRACY. Through the certification bureau that they had set up in the code authority's office.

Senator KING. That some of the persons connected with the N. R. A. and some of the bidders had gotten the matter fixed, was that the implication?

Mr. TRACY. That is what that indicates.

Senator KING. Fixed adversely to your company?

Mr. TRACY. Yes, sir.

Senator KING. What business had Mr. Herman Roe to sit in that compliance hearing?

Mr. TRACY. He had no right to do it.

Senator KING. Did he take any part?

Mr. TRACY. Yes, he did. We have got in the record here that Mr. Scoggin will explain, who follows me.

Senator KING. Proceed.

Mr. TRACY. One of the specific charges growing out of the complaint is that we did not include "proper" depreciation charges in our bid for the State printing contract. Arthur Moon, director of membership relations of the United Typothetae of America, the National Code Authority, in a letter dated March 12, 1935, made the following pertinent statement:

> The United Typothetae of America standard cost-finding system, which is the effective cost-finding system under the code, requires that depreciation be charged into the cost at standard rates based on the original cost (manufacturers' sales price of the equipment when new) of the equipment, and such depreciation is to be included in the cost even though the asset has been fully depreciated.

We submit that this is an unreasonable charge to the consumer. We include in all bids as an item of expense of production a depreciation item charged on the same basis as permitted by the Internal Revenue Bureau for income-tax purposes, and such charge was included in the bid for State printing.

The acid test as to whether or not selling prices are below cost of production is to compare income with expenditure. If income equals or exceeds total expenditures for all purposes it is evident that the selling price is equal to or above cost of production. Such has been our experience.

Our experience over a period of years as producers of printed matter for sale certainly is sufficient to justify consideration as a partial answer at least to the charge that we were selling below cost. Our income is compared with expenditures by a comparison based upon

the proper relation between the two as determined and approved by a reputable public accountant.

CONCLUSION

This agitation, intimidation, coercion, and persecution is a direct result of the Perkins-Tracy Co. entering into a competitive field held as a monopoly for approximately 20 years by three large printing concerns in the Twin Cities, which not only control the largest volume of printing in the Twin Cities, but apparently control the personnel of the code administration agencies.

Immeasurable injury to our business, loss of valued customers through methods bordering on boycott, and a financial outlay of approximately $2,000 since July in defense against this unfair and unjust charge of noncompliance is the direct and provable result of the activity of the regional and local code authorities of St. Paul, Minn.

Senator KING. How long has your company been in business?

Mr. TRACY. About 25 years.

Senator KING. In the same town of St. Paul?

Mr. TRACY. Yes, sir.

Senator KING. Did you have any difficulty prior to 1929 or since in getting such credit as you needed with the banks?

Mr. TRACY. No, sir.

Senator KING. You had good credit?

Mr. TRACY. Yes, sir.

Senator KING. Who are those three companies there in Minneapolis who had control of those contracts, apparently?

Mr. TRACY. McGill Warner Co., Brown & Biglow, and the Syndicate Printing Co.

Senator KING. Who got the contract?

Mr. TRACY. I got it.

Senator KING. You finally got it?

Mr. TRACY. Yes, sir.

Senator KING. All of their efforts to prevent it failed?

Mr. TRACY. Yes, sir.

The CHAIRMAN. All right, Mr. Tracy, thank you.

Senator BLACK. I want to ask a question. Do I understand that the code authority went over your system of bookkeeping and insisted that you raise the value of your property above what it cost?

Mr. TRACY. Yes, sir.

Senator BLACK. Who did that?

Mr. TRACY. That is what they tried to put in under the U. T. A. cost-finding system.

Senator BLACK. Did they go over your salaries and things of that kind?

Mr. TRACY. Yes, sir; they checked that.

Senator BLACK. What did they say about salaries?

Mr. TRACY. They could not find anything wrong about it.

Senator BLACK. They were high enough to suit them?

Mr. TRACY. Over the code requirements, the union scale.

Senator BLACK. What were the code requirements for salaries?

Mr. TRACY. I don't know just off-hand.

Senator BLACK. How much were the salaries? What was the highest salary?

Mr. TRACY. $1 an hour and over.

Senator BLACK. That is the wages of employees. Did they go over the salaries of officers in their cost-accounting system? Did they require you to report on that?

Mr. TRACY. No, sir.

Senator BLACK. What did they require you to report on?

Mr. TRACY. They wanted me to put in U. T. A. cost-finding system, which would bring my figures up to compare with these big companies, and then I would be out of luck for getting any business at all.

Senator BLACK. What else did that include besides the value of your assets on which you were supposed to get a profit? That is what I mean. As I understand it, they wanted you to raise the value of the assets that you had so that you could charge a bigger percentage to cost.

Mr. TRACY. Increase my cost; yes, sir.

Senator BLACK. In other words, it cost you $2,000, and you put it down at $3,000; you were supposed to get advice based upon that entire $3,000, or enough expense to maintain it?

Mr. TRACY. Yes, sir.

Senator BLACK. What other items did they insist in this cost accounting be included?

Mr. TRACY. It would be only on the equipment.

Senator BLACK. Only on the equipment?

Mr. TRACY. Yes, sir.

Senator BLACK. How many items did they insist that you raise the value on?

Mr. TRACY. All of them. They want to have a set value of what they are when they are bought new.

Senator BLACK. Do you favor a price-fixing system?

Mr. TRACY. No, sir.

Senator BLACK. You prefer to enter the fields of competition?

Mr. TRACY. Yes, sir.

Senator BLACK. Do you favor a minimum wage and maximum hours?

Mr. TRACY. You bet.

Senator BLACK. You do?

Mr. TRACY. Yes, sir.

Senator BLACK. You think that that is necessary to protect the wage earners, but you are opposed to the price-fixing?

Mr. TRACY. Yes, sir.

Senator BLACK. Why are you opposed to it?

Mr. TRACY. Price-fixing in a shop the size of mine I would not have any chance with the large shops when it comes to competition.

Senator KING. You mean by that, that the big concerns would crowd out the little ones?

Mr. TRACY. Yes, sir. That has been the condition in St. Paul right now.

Senator HASTINGS. Do you draw a salary?

Mr. TRACY. Yes, sir.

Senator KING. Is that put in as a part of your cost?

Mr. TRACY. Yes, sir. That is an administration expense.

Senator HASTINGS. Did they not make any inquiry of you as to what salary you were getting?

Mr. TRACY. No, sir, they did not make any inquiry on that at all. The only thing they wanted us to do was to put in the U. T. A. cost-finding system. We had a cost-finding system.

The CHAIRMAN. What is the U. T. A.?

Mr. TRACY. The United Typothetae of America. They are the ones that are dominating the Graphic Arts Code.

Senator KING. Who is the head of that organization?

Mr. TRACY. I don't know.

Senator KING. You said that the code personnel, those that were administering the code, were interested in the business. Who are some of the persons who were code officials and dealing with you and what relation did they have with some of these dominant printing companies?

Mr. TRACY. The way they are appointed is on votes. The code authority is appointed by the United Typothetae of America, and it is the pay roll that votes. You get so many votes for so much pay roll, and the three companies have got the big pay rolls, and they can put in any men they want in there. They can pick their own men.

Senator KING. Were you assessed to maintain the salaries of the code authority?

Mr. TRACY. Yes, sir; we are assessed.

Senator KING. Is that true of all of the minority, the small printing companies?

Mr. TRACY. Yes, sir.

The CHAIRMAN. Do you belong to any association?

Mr. TRACY. We belong to the United Typothetae. We were told when we were up here that we had to belong. I have found out since I have been down here that you don't have to belong.

Senator HASTINGS. What is the assessment?

Mr. TRACY. It is based on the pay roll.

Senator HASTINGS. What is your assessment?

Mr. TRACY. I am paying about $27 a month but that will go up because I have increased my pay roll from about 25 employees to about 50 since I have these contracts, so in June when they take the new pay roll, the assessment will go up considerably.

Senator HASTINGS. Something like $50?

Mr. TRACY. $50 or $75 a month.

Senator BLACK. Are you going to make a profit on this contract?

Mr. TRACY. I have made a pretty fair profit.

Senator BLACK. You were satisfied and knew you were making a profit?

Mr. TRACY. Yes, sir.

Senator BLACK. And you are making a profit?

Mr. TRACY. We are making a substantial profit on it.

Senator BLACK. Is there any reason why these other companies should not make a profit?

Mr. TRACY. They have left me alone on the cost proposition since they found that they could not get anywhere on that, but they keep after me in regard to the cost system and depreciation. It has finally simmered down to the depreciation point. That is the only difference between our cost-finding system and the U. T. A., is in the depreciation.

Senator BLACK. I may have misunderstood you, but I understood that they wanted you to continue to charge depreciation even after

the time when you had charged off enough depreciation to absorb the cost?

Mr. TRACY. You start all over again under the U. T. A.

Senator BLACK. That is not at all unusual. I found it out in an investigation 2 years ago.

The CHAIRMAN. Thank you. Mr. L. Smith Scoggin.

STATEMENT OF L. SMITH SCOGGIN, PRESIDENT TYPOGRAPHICAL UNION, ST. PAUL, MINN.

(The witness was duly sworn by the chairman and testified as follows:)

The CHAIRMAN. You are president of the St. Paul Typographical Union?

Mr. SCOGGIN. Yes, sir.

The CHAIRMAN. Proceed.

Mr. SCOGGIN. I have come here to make a statement to enlarge a little bit upon Mr. Tracy's testimony and also to point out that our organization is opposed to any trade association governing completely the administration of a code such as the United Typothetae of America.

The CHAIRMAN. You do not work for Mr. Tracy?

Mr. SCOGGIN. No, sir. It is rather an unusual situation perhaps for a representative of organized labor to be supporting a proprietor rather than scrapping with him, but our organization has felt that a great injustice has been done in this particular case, and that perhaps some of the reason for the persecution is the fact that Mr. Tracy's establishment has shown its independence by employing union men rather than men employed through the antiunion organizations, and so our organization has supported him throughout in this entire procedure. Of course, we have records and attorneys who assist us in the preparation of interpreting the code and through our experience we have been able to assist him to a great extent.

Before going any further, I would like to just lay a little background of this particular case which Mr. Tracy cites. The bids for this State printing were advertised for June.

Senator KING. 1934?

Mr. SCOGGIN. 1934. And on June 9 they were opened, and there were bids found to be put in by 3 bidders, all of which were interlocking directorates and interlocking ownerships who were the bidders on the 5 major contracts. There were some 7 or 8 or 9 contracts.

So, a taxpayer brought an injunction suit against the State from awarding these contracts on the ground of fraud, collusion, and the restriction of bidding. The attorney general of the State upheld the suit of the taxpayer and ordered the bids rejected. Of course, these particular bidders were faced with the proposition of upholding their prices or surrendering their right to bid when the bids were readvertised, because the suits were dismissed without prejudice, and had they altered their prices in free and competitive bidding, the firms would have been charged with fraud against the State; in other words, there was no particular reason why a firm should bid $2.50 on July 9 and $2 on July 10 to meet competition when there was not any competition in the first instance.

Senator KING. Were those three bids substantially the same?

Mr. SCOGGIN. They were substantially the same. They were so arranged that one firm would get one particular contract and another would get another, and so on down the line.

But what happened, on the second opening of the bids, when the bids were opened with free and open competitive bidding, Mr. Tracy's firm was low, and immediately the next day—well, I can say that he was low among the responsible bidders. There was one firm which about the same time that the bids were opened went into bankruptcy and was disqualified.

About the day after these bids were opened and before the contracts were awarded, we have definite proof and evidence that the code authorities used every means possible to prohibit him from getting the contract.

Senator CLARK. What do you mean by "every means possible"?

Mr. SCOGGIN. They called up the State and told them that they had violated the N. R. A.

Senator BLACK. Who is "they"?

Mr. SCOGGIN. The code authorities, and also the State compliance director of the N. R. A.

Senator BLACK. Give those names for the record.

Mr. SCOGGIN. The name of the State compliance director is Mrs. Anna Dickie Olesen. The names of the people who called the State on behalf of the State code authorities were William Repke, the executive secretary——

Senator BLACK (interrupting). Of the code?

Mr. SCOGGIN. Of the local code authority. And a Mr. Firestone, an attorney for the local code authority, also wrote a letter.

Senator BLACK. This Mrs. Olesen is the State compliance director?

Mr. SCOGGIN. Yes, sir.

Senator BLACK. Who is working directly under the Government?

Mr. SCOGGIN. That is correct.

Senator KING. What business has she to butt into this until after there had been an award?

Mr. SCOGGIN. She had none. As a matter of fact, her department did not have jurisdiction until after the complaint was filed with her, which was some time in the latter part of July. And they also attempted, as Mr. Tracy has explained, to intimidate the bonding company, or rather inferred to the bonding company, that his firm was not responsible, that they were not equipped to do this work.

Senator BLACK. You say "they." Who did that?

Mr. SCOGGIN. The code authority.

Senator BLACK. The same ones that you mentioned?

Mr. SCOGGIN. Well, so far as we have been able to find out, we have not any definite information as to the exact man except that we know that the bonding company demanded further proof, and they stated the reason, that someone had come to them and told them that the Perkins-Tracy Co. would be unable to do this work.

Senator BLACK. You do have proof of the other statement that you made that these particular people called up?

Mr. SCOGGIN. Yes, sir; we have proof of that. And at that particular time, I was called into the office of the code authority and asked to use my influence with the Perkins-Tracy Co. to get them to surrender the contract. Of course that was not carried out.

Senator BLACK. Who called you?

Mr. SCOGGIN. Mr. Repke of the code authority.

Senator KING. What relation does he have to the code authority?

Mr. SCOGGIN. He was executive secretary. He is not on it now.

Senator KING. Was he discharged as a result of his oppressive conduct here?

Mr. SCOGGIN. That is the general supposition. But there were others who were equally guilty insofar as usurping the authorities that they were given under the code. When these same hearings opened, the opening day of the hearings was the first time that Mr. Tracy had received a specific complaint, that is, actual and specific charges against his firm.

Senator KING. The State was willing to accord him the contract?

Mr. SCOGGIN. They did award him the contracts; yes.

Senator KING. And these efforts to compel him to release the contracts were persisted in after the State had awarded it to him?

Mr. SCOGGIN. No; they insisted that he had violated the code in getting these contracts at that price, and that the only restitution that it was possible for him to make at that time was to surrender the contracts.

Senator KING. That was the claim?

Mr. SCOGGIN. Yes, sir; that was the claim of the code authority.

Senator CLARK. Why was the price at which he bid, according to their contention, a violation of the code?

Mr. SCOGGIN. The charges, I believe, were that he had quoted prices not in conformity with any system approved by the code authority.

Senator CLARK. In other words, the price is based on cost?

Mr. SCOGGIN. As a matter of fact, that is our interpretation.

Senator CLARK. And what Mr. Tracy had done was to fail to conform or pad his cost?

Mr. SCOGGIN. That is correct. That amounts to the same thing.

Senator CLARK. In other words, he fixed his prices from his actual cost instead of a fictitious cost?

Mr. SCOGGIN. That is correct. It may be well to state that they attempted to fix the prices on these particular contracts by a rather crude system. They set up what was known as a cost certification bureau, and it might be more accurately called a central estimating bureau in which each proprietor was supposed to take the bids. If he received an order for work, he was supposed to make up his costs and take it to this particular central estimating bureau, and they were to check it whether it was correct or not, and if it was found to be too much, they were to say so, and if it was found to be not enough, he was to raise the price and he was not to sell below the price which they certified. Of course that was a provision which in the code authorities attempted to set up in connection with the code, but which the code absolutely makes no provision for.

Senator HASTINGS. Does the code say anything about the price which may be bid?

Mr. SCOGGIN. The code prohibits selling below the cost of production as determined by accurate cost finding methods. These particular bids and this particular charge, insofar as the item of depreciation is concerned—perhaps I am getting ahead of myself to say that Mr. Tracy's system on cost finding conforms in every respect to the U. T. A. standard system with the exception of the item of depreciation

tion. He charges depreciation into his costs at the same rate as he does for the internal revenue purposes, that is for income-tax purposes, and the system calls for a charge of 10 percent on the original cost of equipment.

Senator CLARK. You mean they limit the depreciation at any stage to 10 percent?

Mr. SCOGGIN. That is right. Of the original cost.

Senator CLARK. Which would simply mean to putting in a dead horse at the price of a live horse.

Mr. SCOGGIN. That is right, as if you were to purchase a second-hand machine for $1,000 instead of being permitted to charge a depreciation of that on the $1,000, you would have to charge a depreciation on $3,000 if that happened to be the original cost of the machine at the factory, and that goes on indefinitely.

Senator BARKLEY. Does not the actual depreciation in a piece of machinery at any given time of its life have a relationship to its value at the time it was made and could again be used? Not necessarily its value at some second-hand or resale price.

Mr. SCOGGIN. That would be hard to determine. It might be so. But the system of which we are talking requires that they charge 10 percent of the original price for the machine at the factory when new.

Senator BARKLEY. For instance, if a machine cost $3,000 to you, and you used it for a year and sold it to somebody else, presumably the rate of depreciation would be the same?

Mr. SCOGGIN. That is right.

Senator BARKLEY. Regardless of ownership.

Mr. SCOGGIN. That is right.

Senator BARKLEY. So that there would be a relationship, if 10 percent or any other percent was a fair average during the life of the machine, and then that would continue?

Mr. SCOGGIN. That is right.

Senator BARKLEY. Regardless of ownership?

Mr. SCOGGIN. That is right.

Senator BLACK. I want to be clear on that. I sold a Ford automobile the other day for $25. Originally it cost about $500. Under this system, if this gentleman had had this Ford automobile which he bought for $25, he would have to charge 10 percent of the $500 each year, in other words $50 each year on the automobile which cost him $25?

Mr. SCOGGIN. That is correct.

Senator BLACK. That is the system they have?

Mr. SCOGGIN. That is the requirement of the system.

Senator BARKLEY. That illustration is reductio ad absurdum, is it not? That is an exceptional case. We are not talking about a depleted, delapidated, superannuated Ford automobile.

Senator CLARK. Suppose a man bought a printing press, a second-hand or a third-hand printing press, for $1,000, let us say, which had originally cost $5,000. Under this system, as a part of his costs on which his prices would be based, he would have to set up each year 10 percent of $5,000 as depreciation on this $1,000 third-hand printing press?

Mr. SCOGGIN. That is correct.

Senator CLARK. And base his prices on that, and according to the code authority if he did not conform to those prices, he would be guilty of a crime?

Mr. SCOGGIN. That is correct.

Senator BARKLEY. If the original owner kept it and had to depreciate 10 percent, and that concern went into the cost of his production, would that have any relationship to the relative cost of production of two different companies, one that kept the machine until he wore it out, and another one that bought it in mid-life, we will say?

Mr. SCOGGIN. It might have to this extent, that the majority of printers, I believe, do charge depreciation on these very costs at the same rate that they pay for the income-tax purposes. That has been the general accepted practical theory. That is the practice.

Senator CLARK. And that is all the depreciation they can get away with, is it not?

Mr. SCOGGIN. That is all.

Senator BARKLEY. That is not the only standardized method of depreciation that we have in this country?

Mr. SCOGGIN. That is correct.

Senator CLARK. But it is not the same rule as they use for income-tax purposes?

Mr. SCOGGIN. No.

Senator CLARK. And they are setting up a rule that the Bureau of Internal Revenue would not possibly let them get away with if they tried to set it up for internal-revenue purposes?

Mr. SCOGGIN. That is right.

Senator BLACK. Mr. Tracy was using the same method as he used for income-tax purposes?

Mr. SCOGGINS. Yes, sir.

Senator BLACK. And as I understood it, even after the original cost of $3,000 or $5,000 had been charged off, they required that he continue to put up 10 percent of his depreciation and start to depreciate it the second or the third time?

Mr. SCOGGIN. That is right.

Senator BARKLEY. Is there any element of fairness as between competitors that entered into the cost of production, by a firm that uses cheap second-hand machinery, and one that uses new machinery?

Mr. SCOGGIN. I cannot see that there is.

Senator BARKLEY. If you base the costs on the cost of the equipment, would not the man who had equipped his establishment with half worn-out machinery that he bought at half or third price, be able to sell his product cheaper than the other concern, and still not sell it below his actual cost?

Mr. SCOGGIN. That would, but by that method you would take the premium off of the sound business principles and good management.

Senator CLARK. And if you compelled a little fellow who has to go out and buy a second- or third- or fourth-hand piece of machinery, to build up a fictitious price for it to the same level as the big people who are able to go out and buy new machinery all the time, it automatically puts the little fellow out of business, doesn't it?

Mr. SCOGGIN. That is correct.

The CHAIRMAN. Is there anything else?

Senator CLARK. Let me ask you one other question. Did you ever hear of this system of depreciation in any other manufacturing business?

Mr. SCOGGIN. No; I have not.

Senator CLARK. Neither have I.

Senator COUZENS. Would not the life of the machine enter into the depreciation, however? I have not heard that discussed.

Senator CLARK. Not necessarily.

Senator COUZENS. Certainly it would. If a $1,000 machine had a 3-year life because it had had previous years, would not a $3,000 machine depreciate $300 per year?

Mr. SCOGGIN. You mean a depreciation at the original cost of the machine?

Senator COUZENS. Never mind the original cost. If it had a 3-year life, for instance, would not approximately $300 be a proper depreciation on that machine if it only had approximately 3 years of life?

Mr. SCOGGIN. You mean if the machine costs $300?

Senator COUZENS. No. If you had a $3,000 machine, for instance, and charged it off at 10 percent a year, that would be $300. And if a machine purchased for $1,000 had a 3-year life, would it not be equitable to have a $300 depreciation per year?

Mr. SCOGGIN. No; I do not believe so.

Senator COUZENS. Suppose a machine was gone in 3 years, what then?

Mr. SCOGGIN. If the business stay in business, that is, if the firm was to stay in business, they would have to allow for that. That is all there is to it. The law of economics would take care of that.

Senator COUZENS. I think Senator Barkley was right. It does not matter who the ownership is, if you are charging off 10 percent a year upon the original cost of the machine, and it goes through for 10 years at 10 percent a year, it does that regardless of the ownership.

Mr. SCOGGIN. It is wrong to this extent. There are a great many printers throughout the country who have machines fully depreciated and that have paid for themselves many times over. To add 10 per cost of new equipment, would only mean adding 10 percent to their costs. In the case of a firm doing $100,000 worth of business a year, it would mean there was $10,000 additional to spread over the cost of their products.

Of course, as near as I can have an opinion, the purpose behind this is to make the man who has expanded unreasonably, who has gone out and purchased an awful lot of equipment, and then wants to be protected against a competitor who has had sounder judgment.

Senator COUZENS. I am not arguing that. I was just asking the question as to depreciation, because it is sound regardless of ownership.

Senator CLARK. It is a fact, is it not, that the violation with which Mr. Tracy was charged was that he set up depreciation according to the method prescribed by the Internal Revenue Bureau for his income taxes?

Mr. SCOGGIN. I might explain that by saying that is what it finally came to.

Senator CLARK. The only difference in their cost-accounting system and his cost-accounting system was that he set up his depreciation on the basis prescribed by the Bureau of Internal Revenue, and they set up theirs on this artificial system of 10 percent of the original cost.

Mr. SCOGGIN. The original charge against him was that he had not had his bid certified. That fell through when attorneys for Mr. Per-

kins were there to show that it was not provided for in the code. The second charge was that he had sold below cost of production. That they were unable to prove. So they went a little bit outside of what the specific charges were and now thay have found him guilty of not having a cost-finding system that conforms, because he does not charge depreciation on that basis.

Senator CLARK. And that difference was that he set up his depreciation according to the method prescribed by the Bureau of Internal Revenue of the United States, and they set theirs up according to this artificial system of setting up a 10-percent depreciation of the original price?

Mr. SCOGGIN. That is correct.

Senator KING. Was there very much difference between his bid and the bid of these three?

Mr. SCOGGIN. Not a great deal. The bids varied to a great extent. The bids were itemized. On some particular items, the bids were higher. I think there were some particular contracts that he bid in that he did not succeed in getting.

The other thing that I would like to mention in this connection pertains more directly to my organization, and that is the fact that these same code authorities and the same compliance directors have failed to cooperate and failed to take definite action in the enforcement of the labor provisions of the code. The one largest competitor in this particular contract, I had a specific labor complaint against, and although the compliance board found in our favor, when it came to enforcement, the firm in question was permitted to absolutely flaunt the orders of the compliance board, and even though we filed many protests since then, the case is still pending.

I have just yesterday, here in Washington, dug out of the files a case that I sent here last May concerning the labor provisions of the code, and it has not been acted upon yet. That came from our local code offices. We have been absolutely unable to secure any cooperation or any substantial enforcement of labor provisions of the code, in the printing trades industry, and it might be well to bear in mind that although the code calls for the higher rates of pay than previously paid in these establishments, that this particular firm today is competing with business establishments that do not pay more than 50 percent of the wages for the same class of work that this particular firm pays.

Senator KING. You mean that Mr. Tracy pays? Mr. Tracy pays higher wages than the others?

Mr. SCOGGIN. Yes, sir. And my purpose in being here today is to protest—I am not here to protest against the N. R. A.; we like the N. R. A., we want it continued, it has done a great deal of good, but we would like to have some provisions made to eliminate a trade association which has a set-up that permits it to pick its officers among the favored few establishments in the industry. As Mr. Tracy explained, votes are cast for officers of the United Typothetae in accordance with the pay-roll assessment. In our particular city, four firms could outvote all of the rest of the State of Minnesota and also South Dakota together on the basis of pay-roll assessments.

The CHAIRMAN. Thank you very much, Mr. Scoggin.

Senator CLARK. Let me ask one other question. I understand that four firms could outvote all the others in the State of Minnesota and North and South Dakota combined?

Mr. SCOGGIN. Yes, sir.

Senator CLARK. Which automatically gives them control in the four combined together on the code authority?

Mr. SCOGGIN. Yes, sir.

Senator CLARK. And that this case has been brought against the firm which pays wages largely in excess of the firms represented by the code authority?

Mr. SCOGGIN. Yes, sir.

Senator CLARK. On the ground that he had set up a rule of depreciation as prescribed by the Bureau of Internal Revenue rather than the fictitious depreciation which they set up as a basis of cost.

Mr. SCOGGIN. That is the picture exactly.

The CHAIRMAN. Thank you. Mr. Nelson.

Senator KING. While we are waiting for Mr. Nelson, I would like to read into the record a part of a letter addressed to me from Mr. W. H. Sweet of the Sweet Coal Co. of Utah [reading]:

> The railroad-owned mines in this coal district dominates the coal association to the great disadvantage of the smaller operator. These railroad-owned coal mines sell coal at cost or below in order to maintain their exorbitant freight rates. * * * Our men are very dissatisfied with the National Recovery Administration. It has worked to our great disadvantage. The National Recovery Administration has not increased the employment one man in Carbon County—

which is the county in my State where the principal coal mines are found and where the principal production of coal is found.

STATEMENT OF D. M. NELSON, ASSISTANT TO CHAIRMAN NATIONAL INDUSTRIAL RECOVERY BOARD

(The witness was duly sworn by the chairman and testified as follows:)

Mr. NELSON. I am assistant to the chairman of the National Industrial Recovery Board, National Recovery Administration.

The CHAIRMAN. Mr. Nelson, you know about the matters about which we have been asking questions. Make your own statement with reference to that particular case.

Mr. NELSON. Mr. Chairman, I would like to, if I may, just describe very briefly what our process in the supervision of code authority administration is, thinking that it will be of interest to the committee and the Senators, and incidentally, if the chairman so wishes, I will bring up the fire hose and Kunze matter as an incidence of that presentation as one of a number of cases of this kind which we have, and showing you the method in which we handle it.

The CHAIRMAN. All right; proceed.

Mr. NELSON. The National Industrial Recovery Board last December set up a position of code administration director, who reported directly to the administrative officer, and whose duties, among others, were to supervise the code administration by the code authorities.

Senator KING. Who was the director?

Mr. NELSON. I was until April 1, yesterday. I was code administrative director of the N. R. A.

Senator KING. Of the whole N. R. A.?

Mr. NELSON. Mr. Averill Harriman is administrative officer. I reported to the Board through Mr. Averill Harriman in this particular job which I shall describe.

The CHAIRMAN. You said until yesterday?

Mr. NELSON. A new one was appointed yesterday. I must come back to my business, and a new code administration director was appointed to carry on the work.

The CHAIRMAN. Where do you live?

Mr. NELSON. Chicago.

Senator BARKLEY. What is your business?

Mr. NELSON. I am on leave of absence from Sears, Roebuck & Co.

Senator BARKLEY. Who has been appointed to succeed you?

Mr. NELSON. Mr. Prentice Coonley, who was administrator of our Textile Division.

Senator BARKLEY. Who is he?

Mr. NELSON. At present he is not employed except by N. R. A. He was formerly with the Link-Belt Co., and then with the Walworth Co.

Realizing that proper administration of our codes by code authorities is one of the most important tasks to come before us, a procedure has been set up which has developed out of our experience with a number of cases that have come into N. R. A. showing lack of knowledge on the part of the administrative agency of the code, which was the code authority, lack of knowledge of their particular duties and responsibilities to their industry and to the Government in the administration of their codes.

A definite procedure was set up whereby the deputy administrator of N. R. A. was made responsible for the actions of the code administrator in connection with the administration of the code. An assistant to the code administration director was set up, whose main responsibility it was to supervise the work on the advice in connection with this codal authority administration, and an orderly procedure was set up whereby code authorities could be removed upon proof of any malfeasance of office.

The code authority is perhaps somewhat of a misnomer. The authority of the code authority is extremely limited, even in some of the earlier codes. The code authority was the agency set up by the Government in connection with the code to bring about compliance in the industry with the code by means of conciliation. The code authority has no direct responsibility to the Government for acting on compliance cases. It has no power to remove or punish any member of the industry except as that may be done by the Compliance Division of the N. R. A.

Senator BARKLEY. Let me ask you there. You say the code authority was set up by the Government?

Mr. NELSON. Yes, sir.

Senator BARKLEY. The Government only provided in these codes that the industry affected by the codes should set up the authority.

Mr. NELSON. You are quite right, Senator. What I should have said was that the code provided that a code authority be set up to do these things. The membership of the code authority was approved by the Government, selected by the industry, and approved by the Government.

Senator CLARK. By N. R. A.?

Mr. NELSON. Yes, sir.

Senator KING. Those persons who have assumed jurisdiction of industries respectively, are, as a rule, members of trade associations, are they not, and who came here shortly after N. R. A. was set up and formed these codes, and then submitted them to General Johnson for his approval?

Mr. NELSON. That is true, Senator. The act, I believe, provided that trade associations should submit codes to N. R. A.

Senator KING. And substantially all of the six or seven hundred codes were formulated by members of trade associations or by a limited number of persons engaged in the industry.

Mr. NELSON. By trade associations and by others, nonmembers of trade associations, and certainly it would not have been regarded as representative in character, which the act provided for. Before a code was approved, the sponsoring group must show it was representative, and unless the trade association was truly representative of the industry, the code could not be approved under the act.

The CHAIRMAN. All right; proceed.

Mr. NELSON. Administrative order X–132 was set up in December, about the middle of December.

Senator KING. What number was that?

Mr. NELSON. X–132 under date finally approved on January 14, 1935.

Senator KING. Still giving orders, are they, in 1935?

Mr. NELSON. Well, sir, we must give orders for the proper administration of our codes; yes, sir.

This is the prescribed regulations covering removal of code authorities and similar agencies, and disqualification from service of agents, attorneys, and employees thereof.

This was set up primarily to deal with cases of oppression by code authorities, of going outside of the code to perform illegal acts in connection with price-fixing, collusion, if you please, and one of the sections of this order provides that a member or members of the code authority may be removed from office for cause and a temporary successor or successors appointed until a permanent successor or successors have been duly chosen, for an illegal act in connection with the activities of the code authority.

Senator COUZENS. Who signed the order?

Mr. NELSON. Mr. Averill Harriman, the administrative officer of N. R. A.

Senator KING. It was not signed by Mr. Richberg or General Johnson, but by Mr. Harriman.

Mr. NELSON. An administrative order is signed by Mr. Harriman for the National Industrial Recovery Board.

Senator KING. Was not that a recognition of what it is claimed is a fact, namely, that most of the codes were formulated by dominant elements in the industries, and that those who were chosen to enforce the codes were as a rule persons who were connected with those dominant industries?

Mr. NELSON. No, sir; that is not my experience in connection with this work during the time I have been on it. That is not the reason this order was set up. This order was set up because there were a few who showed themselves unfit to perform the duties which they had undertaken for their industry, and to give orderly procedure, whereby they might be removed and the act corrected. That is the purpose of the order.

Senator KING. It was a recognition, as you read there, that there had been collusion and price-fixing and many abuses, and using your word "oppression", by the code authorities?

Mr. NELSON. It was a recognition that there were some. It would be, I think, very unreasonable to expect that something over

1,600 of these bodies could be set up in the short space of time which we had to work on and not have some instances of such acts. It came about many times from a lack of knowledge of what their responsibilities were, and I must say you are quite right, it came about in some instances through intention.

The CHAIRMAN. It was to cure an evil that was shown by experience to exist to some extent?

Mr. NELSON. That is right.

The CHAIRMAN. Did you have to discharge any of the members under that order?

Mr. NELSON. Yes, sir; we did.

The CHAIRMAN. How many?

Mr. NELSON. I cannot give you the exact number. I am prepared to give you a few typical cases, if you would like to have them. I have not the exact number, but since this has been promulgated, our organization is actively at work and——

Senator CLARK (interrupting). What was the date of that order?

Mr. NELSON. January 14.

Senator KING. You are having a purge, as Hitler used the expression, are you?

Mr. NELSON. No, sir; I would not call it a purge as Hitler would use the expression. I would call it good administration of our responsibilities.

Shall I discuss the Kunze case as an incident to this, or would you prefer that I show you some of the other cases first?

The CHAIRMAN. That was one that is very glaring. It might be well to touch on that.

Mr. NELSON. May I read you from the chronology of our records in connection with this particular case?

On January 17 of this year was the date of solicitation of bids for rubber-hose contracts by the city of Milwaukee. On January 23, 1925, a circular was sent out by the divisional code authority signed by Mr. Kunze, in which he said:

> Under this caption, kindly bear in mind that the industry has taken exception to this Executive order and as you know has filed a brief in Washington to be exempted therefrom. Pending such action, they have deemed it advisable to disregard this order and only quote filed prices.

It must be remembered that in this code there are filed prices, permission is given under the code to file prices, and there is a 10-day waiting period before those prices become effective.

Senator KING. That means open prices?

Mr. NELSON. Yes, sir.

Senator KING. You used the words "filed prices" as the equivalent of open prices?

Mr. NELSON. Yes, sir. Our records show that on February 4 that circular was received by N. R. A. Our assistant deputy administrator, Mr. J. H. Lenearts, under date of February 6, wrote to Mr. F. J. Martin, who is an administration member on this code, and wrote as follows—and I would like to explain to you just what purpose these administration members are supposed to cover under our Administration—and writing to Mr. Martin, he said:

> This action on the part of Mechanical Rubber Goods Divisional Code Authority is, in the opinion of the Legal Division, and I concur in it, an illegal and unwarranted act; that is, for the divisional code authority to ask members of its industry to uphold prices on governmental orders.

I will skip and go to the last paragraph:

Will you please immediately contact Mr. A. D. Kunze, secretary of the Rubber Goods Divisional Code, and call this matter to his attention and take steps to have the bulletin rescinded. Also warn him to take special care in future to advise the authority that actions of this type are illegal and should not recur.

That was on February 6. On February 11 this particular case was referred to the Federal Trade Commission by Mr. Nicholson, who is the purchasing agent for the city of Milwaukee.

Senator KING. And who testified yesterday?

Mr. NELSON. Who testified yesterday; yes, sir.

In the normal course of our procedure, this deputy administrator should have referred this particular case to our office. I must admit that he did not do it; his reasons being that on February 11 this complaint was made to the Federal Trade Commission.

One of the last steps in our procedure, in case N. R. A. cannot get proper corrective measures put through by the divisional code authority is to refer the case to the Federal Trade Commission or to the Department of Justice for such action as they may see fit, and I will show you another case that has been handled in that way. But inasmuch as this case had been referred in previously, the deputy thought that the Federal Trade Commission would handle the procedure through without his following the regular procedure outlined in our instructions to the divisional administrators, to the deputies, and to the whole organization, our instructions being just these: That whenever an action of this kind occurs we must take prompt and decisive administrative action to see that that particular thing is corrected.

It is a thing, of course, that good administration cannot condone on the part of a code authority. But inasmuch as this case had been referred to the Federal Trade Commission, which would be, as I say, one of the latest steps in our procedure, a hearing was not called by the code authority or referring it to our office. In the normal course of procedure we would call a hearing—a hearing for this industry if they did not take action rescinding that, to explain to us why such action was not taken. I am merely telling you the circumstances of the case.

Senator KING. Would it interrupt you if I asked you this question?

Mr. NELSON. Not at all. I would be glad to have you do so.

Senator KING. You mentioned the Federal Trade Commission. You believe, do you not, that the Federal Trade Commission under the authority which it possesses has jurisdiction to hear complaints relative to unfair trade practices?

Mr. NELSON. It certainly has, and we have recognized it as such.

Senator KING. And it has made many findings showing that certain practices were unfair?

Mr. NELSON. That is right.

Senator KING. And has issued orders to desist?

Mr. NELSON. It has.

Senator KING. And in certain instances, it has referred, together with the evidence taken in the hearings, it has referred the matter to the Department of Justice?

Mr. NELSON. That is right. And we would not hesitate at all to refer a case in which N. R. A. could not get quick action from the

code authority. Mind you, in our set-up the code authority may be immediately investigated and may be immediately suspended and a new code authority appointed by the industry, or our own general code authority, which is an agency set up to take over the administration of the code in an industry, provided that we cannot get the code authority that can function in an extreme case. It must be remembered that these are extreme instances, and not a matter of great number.

Senator CLARK. Admitting that these might have been unusual or extreme instances, upon which I express no opinion, these facts, insofar as this particular incident in connection with the mechanical rubber goods industry; that is, the issuance of this order by the code authority was an undisputed fact, was it not?

Mr. NELSON. In our opinion it was an undisputed and illegal act.

Senator CLARK. They issued the order and that made the fact itself, the order of which you had a copy?

Mr. NELSON. That is right, sir.

Senator CLARK. Therefore, why was it necessary to have a hearing without proceeding to take action?

Mr. NELSON. Because they must have had some good action for doing it, and I do not believe that you would want us to take any bureaucratic action without giving the industry a chance to be heard on why they did it.

Senator CLARK. It was a palpable violation of the law. It seems to me the proper thing to do would be to enforce it, and to take steps to see that the law was enforced.

Mr. NELSON. Who but a court would determine that a thing is a palpable violation of the law? In other words, in our opinion it was, but that did not necessarily make it so.

Senator CLARK. That is the reason I suggest that it should have been sent to the proper legal authority instead of N. R. A. The facts were undisputed. Nothing could be proved further than the issuance of the order.

Mr. NELSON. In the opinion of the industry, the facts are disputed. That is what I want to point out.

Senator CLARK. The issuance of the order?

Mr. NELSON. The fact that the issuance of the order is illegal is disputed by the industry.

Senator CLARK. The place to take that was to the courts.

Mr. NELSON. What you want is quick and efficient, prompt administration, and I think you will agree that court procedure, while I am not critizing it, is a long process, and if one can be devised which will bring the action much more promptly, it was thought it would be more advisable. True, in the final analysis, our action does not necessarily mean that court action would not be taken; in other words, if collusive, intentional, price fixing not provided for by the code had been indulged in by the code authority and was a clean-cut case, it should not be hesitated to refer it to the proper parties to take definite action through the courts. I am talking about that interim action to prevent its constant recurrence until final, definite action can be taken.

Senator CLARK. But in this case, although the facts appear on the face of the record and were not disputed, no action was taken at all.

Mr. NELSON. I do not know what you mean by "not disputed." I have just said that the industry disputes that this is the fact.

Senator CLARK. They did not dispute the fact that Mr. Kunze issued this order?

Mr. NELSON. No sir, they did not. It is the text which they disputed as being an illegal act.

Senator CLARK. Did they claim that the order which you just read was not an improper action?

Mr. NELSON. Yes, sir; and I will be glad to read you their letter if you would like to have their letter written to us on March 1.

Senator CLARK. What I want to know is, did they dispute the issuance of the order as you read it?

Mr. NELSON. They did not dispute the issuance of the order. They disputed that the text of the order was in violation of the law.

Senator Clark. That was a purely legal question which you could not determine.

Mr. NELSON. And which the courts can determine. I am sure that is a procedure which we all know takes a great deal of time to finally determine.

Senator COUZENS. I have to go to another committee hearing. May I ask before I leave if you approve, from your experience, of open prices being posted?

Mr. NELSON. Well, sir, there is nothing in our record which proves that open-price filing under proper regulations—and I will explain what I mean to you by proper regulations is not of benefit to all parties concerned.

Now let us see what I mean by proper regulations. In the first place, that open-price filing be informative and be done after the fact so that it notifies other members of the industry and customers as well, all concerned, what price was made and under what terms. That is what I meant by open price filing.

Senator COUZENS. After the deed is done?

Mr. NELSON. After the sale, yes, sir.

Senator COUZENS. Not before? You do not approve of the open prices before the sale?

Mr. NELSON. There are certain conditions. Again we cannot generalize, because there are certain conditions under which open-price filing with even a waiting period, in my opinion, may be justified, but I think they are very very few.

Senator COUZENS. Would Sears Roebuck approve of that system in the way they handle their business?

Mr. NELSON. Do you mean to approve of open-price filing?

Senator COUZENS. Price-fixing, either before or after the act?

Mr. NELSON. No, sir. Sears Roebuck would not and I think our record down here shows that we have consistently opposed open-price filing and consistently opposed such procedure, but, sir, you did not ask for Sears Roebuck's opinion; you asked for mine.

Senator COUZENS. Your own opinion differs from Sears Roebuck?

Mr. NELSON. My own opinion differs from theirs because I have had this intimate experience down here for 8 months observing these things, and weighing it on all sides and trying to find out what is the best thing for all parties concerned.

Senator COUZENS. When these prices are fixed or posted before the act, that accounts then for the uniformity of bids received by these governmental agencies or municipalities?

Mr. NELSON. That is right.

Senator COUZENS. Do you justify that?

Mr. NELSON. To this extent, that it does not necessarily follow that because prices are uniform that there has been collusion or that the prices are wrong, and, in my opinion, I think that open-price filing, properly done, will tend to make lower prices than without price filing. In the final analysis, when prices are open and everyone knows what everyone else is selling at and orders are put in not on the basis of quality—and I want to point out that distinction between governmental purchasing and private purchasing. In governmental purchasing, the lowest bidder must be given the business, everything else not being considered. That is the legal requirement, I believe. Under open-price filing, you may have unusually low prices as well as unusually high prices. Certainly if there is any attempt at collusion, in my opinion, the thing would be illegal and absolutely wrong.

Senator COUZENS. What is it then if it is not collusion if all of the bids are alike? Is that not collusion?

Mr. NELSON. No sir; they can be all alike and there be no collusion. If there is a waiting period in the code—in this particular code we are discussing, the mechanical goods rubber subsection of the rubber goods industry—there was a waiting period of 10 days.

You and I are both manufacturers and you file your price, but it must be effective 10 days after you file it. I also am a manufacturer and I see the price that you have filed. What is more logical that I should in turn file a price as low as your price? If I want the process to continue, I will file a price lower than the price you have quoted. Then you, as a manufacturer, will come back and lower your price to that one that has been quoted, and that process may go on until there be a destructive low price just as much as there may be a destructive high price.

Senator COUZENS. You referred to lower prices. They might also be high.

Mr. NELSON. I said that.

Senator COUZENS. But you justify them all bidding alike regardless of economic conditions and proximity to delivery and efficient management, you justify them all bidding alike?

Mr. NELSON. No, sir; I think you misunderstood me. I was not justifying their all bidding alike. I am not attempting to justify all bidding alike in any sense of the word. There may be differences in quality, there may be differences in service, there may be other differences which justify differences in the price. But I am only pointing out to you how it may be without all being collusive.

Senator COUZENS. How do they bid alike without conditions all being alike?

Mr. NELSON. As I explained, under the law the purchasing agent must award the contract to the lowest bidder.

Senator COUZENS. When there is no lowest bidder, what then?

Mr. NELSON. Do you mean when they are all alike?

Senator COUZENS. Yes.

Mr. NELSON. Then he must do it in other ways, by lot perhaps as it is sometimes done.

Senator COUZENS. And so when they all bid alike, certainly some of them are getting much more profit than the others?

Mr. NELSON. That is certainly true.

Senator COUZENS. Then you justify that?

Mr. NELSON. No, sir; I was not justifying it. Do not misunderstand me. I am not justifying the fact that all prices may be alike. I am only pointing out to you, merely informatively, how they may be all alike without there being collusion, and because they are all alike it does not necessarily follow without question that there has been collusion. That is all I am attempting to do.

Senator COUZENS. It seems to me that is a rather technical difference as to whether there is collusion.

Senator CLARK. Would you approve the action of the code authority such as was testified to here in this mechanical rubber goods industry, in which it was shown that one bidder bid 7 percent lower—between 7 and 8 percent lower—than the filed prices, in pursuance of authority granted under the President's Order No. 6767, and following that the code authority intervened to require assurance from every manufacturer engaged in the industry that they would not supply this jobber with the necessary goods to carry out his contract?

Mr. NELSON. No, sir; unless this particular bidder had violated a code provision which he had obligated himself to fulfill, such as the filing of the price 10 days before it was made, or some other provision of the code, labor, wage, or other provisions and other things of that kind, which he had obligated himself to abide by. Unless it had been shown that he had disobeyed the code, that action would not be approved by N. R. A. nor condoned by N. R. A., and I am here to tell you that as far as I personally were concerned, decisive action would be taken to find out why that occurred.

Senator CLARK. In this particular case we have been talking about—of the rubber hose—when your office was set up on January 16, was it called to your attention that there had been complaints from Mayor LaGuardia of New York to General Johnson and Mr. Richberg having to do with a very similar case as the Milwaukee case we have been discussing?

Mr. NELSON. It unfortunately, in this particular case, was not called to my attention until it was brought out at this Senate hearing. Just why, I cannot explain. Perhaps it was because we all slipped, or I had not done a good job——

Senator CLARK (interrupting). Nobody expects you to be infallible.

Mr. NELSON. But it was not done, and it was not called to my attention until it was brought out in this Senate hearing. Now immediate action is being taken in spite of the fact that the Federal Trade Commission is going ahead on this particular case, and N. R. A. has at once started its machinery to work to find out why this occurred on the part of the code authority.

Senator KING. Why cannot the Federal Trade Commission proceed with unfair trade practices and eliminate much of the work which your organization is attempting to perform under this new order X–132 but which, evidently, it has failed to perform in the past?

Mr. NELSON. Well, sir, I think that the Federal Trade Commission may. I think, however, that in the administration of codes, a much more prompt procedure has been and can be devised to take definite action looking toward the correction of the evils. The Federal Trade Commission and the Department of Justice, true, may be a much more effective agency in the prosecution and bringing to the bar of justice, but N. R. A. has taken as one of its positions that our main

responsibility was to see that these things did not occur, in other words to try to correct them in the first instance. If we have failed and if we failed by reason of improper methods, certainly it is the place of the Federal Trade Commission to grab right hold of it and carry it through to a final conclusion.

Senator KING. Proceed, please. Did you have anything further?

Mr. NELSON. Yes, sir, I had one further thing to explain to you in connection with this work: We have in connection with this order also instituted what we believe is a major form of finding out how these things occur, much more promptly and quickly and expeditiously, and out of our experience has grown a very definite philosophy with respect to what are called "administration heads." On every code authority there is provided an administration member to be appointed by the administration of N. R. A., whose main responsibility it will be to inform the deputy and keep him thoroughly informed as to the actions of the particular code authority, especially those actions which in his opinion are extra-code, or actions which are not in line of the correct interpretation of the duties of the code authority with respect to such procedures.

We have also set up administrative officers in New York and in Chicago, under a responsible management, whose job it is to help train these administration heads to do a more prompt and expeditious job in connection with informing his deputy as to the things that are necessary to be done in connection with this particular code authority.

Senator KING. By that you mean you are expanding your personnel, increasing the bureaus and subbureaus and executive organizations of the N. R. A.?

Mr. NELSON. Well, I would put it this way, sir: We are attempting to provide the personnel that will properly enable us to carry out our responsibilities in connection with the administration of these codes, to prevent just such things as this one which has happened and which, without passing judgment on it, in our opinion is not the proper functioning of a code authority.

Senator KING. How many persons are there in your organization and in code authority organizations?

Mr. NELSON. I have not that figure, sir. I will be glad to get it and submit it to you.

Senator KING. It is my recollection there are something like 5,000 or 7,000 in your N. R. A. organization.

Mr. NELSON. I do not know the total of them, but I will tell you the figures that are directly under my jurisdiction. There are 12 division administrators, and approximately 50 deputy administrators, and approximately 100 assistant deputy administrators. Mind you, we are dealing here with some 500 codes that have been provided.

Senator KING. You are still insisting on enforcing codes that are dealing purely with intrastate matters, are you?

Mr. NELSON. We are insisting on the enforcement of all codes as provided under our interpretation of the act that was set up by Congress until we have some clear charter otherwise.

Senator KING. And you are going to continue with present methods and the code authorities which exist plus these additional organizations to which you have just referred?

Mr. NELSON. Well, sir, we are going to the best of our ability, to attempt to get you good administration of the act which Congress has provided.

Senator KING. You knew, did you not, and you know, that the act was to expire in 2 years? You are proceeding now upon the theory, are you not, that it is here in perpetuity?

Mr. NELSON. No, sir, I am not. I am proceeding on the theory that it is here until June 16, 1935.

Senator KING. And no longer.

Mr. NELSON. That is for the Congress to decide.

Senator KING. But are you building a machine larger and more expansive and more bureaucratic in anticipation of a prolongation of the life of the organization?

Mr. NELSON. No, sir, I will tell you this: That every man that has come into any organization over which I have had supervision, I have told him that the act expires on June 16, 1935, and unless a new charter is granted by Congress, that is the end of N. R. A.

Senator KING. Proceed with your statement.

Mr. NELSON. Well, I have completed, unless there are some more questions you want.

Senator KING. Have you read the resolution under which this committee functions in setting forth the statements by Senators Nye and McCarran as to the criticisms leveled against the organization?

Mr. NELSON. I have not read it in detail, sir. I think I have read the substance of it.

Senator KING. I understood you to say that you are going to give some instances where code authorities had been removed.

Mr. NELSON. I will be glad to do it.

In connection with the candy manufacturing industry, about which I believe you have heard something before, information came to us that this particular code authority and the trade association, which were, as in many codes, identical bodies for the purpose of code administration, had been engaged in the process of carrying on a campaign of what they then called "price stabilization." The code originally when approved had provided for the waiting period in connection with their open-price filing. The waiting period had been stayed by N. R. A. and had not been granted to the industry. Information came to us that this particular code authority through its representatives of the trade association and of the code authority was setting up a method of evading this particular provision of their code, which had been stayed, or, to put it another way, had set up a scheme whereby they made effective a waiting period, although it had been stayed and was not granted to them under the code.

Information also came to us that they were attempting to enforce a selling below cost provision of their code, which had been granted in the code but which had never been implemented by either the administration or the administrator or the National Industrial Recovery Board. In other words, many of these codes have a provision providing that there shall be no sales made below cost and that those sales shall be figured according to a definite cost formula set up by the code authority and approved by the administrator.

However, I would like to point out to you that in very, very few instances has that particular provision, although it has been granted in the codes, ever been implemented to the point where it can become an effective functioning medium, and in the particular case of the candy industry no cost formula had either been submitted to N. R. A., or had any been approved by N. R. A., and still the industry, in its

attemps at price stabilization, had tried to enforce a selling below cost provision.

There were certain extenuating circumstances in connection with the industry, it is quite true. There was very destructive price cutting; there is no question about that. Small enterprises were being oppressed by price cutting, and particularly on staple products like jelly eggs which are sold quite extensively at Easter, the evidence showed, and the industry, I believe probably well-intentioned, thought it was doing its duty by attempting to set up a price stabilization of this particular product.

However, the fact came to our attention and we had to take decisive action in connection with it. Our first step was to send out a letter to this particular code authority telling them that in our opinion this action was unwarranted and giving them an opportunity to be heard. The code authority was invited to come down to Washington and sit down with us, not as a trial court at all, but to allow this industry to tell us why it was doing these particular things and how it was doing it, and all of the circumstances surrounding it.

A hearing was held with the code authority, at which time we were told just what had occurred, giving the justification for it by the industry, and so forth.

However, following our procedure of good administration, this was a thing that we could not condone in this particular code authority. Thereupon, certain steps were taken to first separate the trade association and the code authority. Secondly to remove from the code authority the chairman of the code authority who was also the president of the trade association and thirdly, to remove an employee of the code authority who was also an employee of the trade association, and to have the industry submit to us an amendment to their code that would separate effectively the trade association from the code authority inasmuch as we felt that in connection with these particular activities, if the trade association wanted to carry on its price stabilization program, that was up to it to determine its course of action, but it could not as the code authority, under the guise of a code, under the guise of code protection, carry on these particular things which had not been granted to them as a charter by N. R. A.

I have other cases if you would like to have me detail them to you. I can give you a number of other cases of that kind.

Senator KING. You may give the names of the cases without going into detail.

Mr. NELSON. I have brought up a few here with me. In connection with the wholesale confectionery, the work of the national code authority and the local code authority of New York City, we have also taken definite action on pretty much the same general sort of a case.

Senator KING. And removed some of the code authority?

Mr. NELSON. We removed some of the code authority.

Senator KING. Are there any others?

Mr. NELSON. I have here a case, the Beauty and Barber Shop Industry Code Authority, where a representative was carrying on work which did not in our opinion agree with good administration of the particular charter granted to them by N. R. A., and he resigned.

In connection with the Electrical Contracting Code Authority, we have a case which I think will interest you, because it is similar to the

one that I heard this morning. This particular case was referred to us by Mr. Ickes of the P. W. A.

In this particular instance, the representative upon the code authority and the supervisory agency was apparently misusing his trust—I say apparently, because he has not had a final hearing yet in this particular case, to which he is entitled—in connection with the P. W. A. project of the Shreveport city hall, Shreveport, La. In this particular instance we found that there was a doubt as to whether or not this particular supervisory agency as set up by the code authority could function in an impartial manner, and the agency was changed to the chamber of commerce. This particular code provides that bids may be filed with an impartial agency. This particular man who was carrying on the work, his resignation was requested by the N. R. A. in conformity with our procedure.

The same in regard to Louisiana.

Here is an interesting case that I think will interest you——

Senator KING (interrupting). Those cases to which you are inviting attention, as well as others, merely prove that the code authorities had been oppressive or unfair, and that their conduct was such as to call for a reprimand and in some cases a removal.

Mr. NELSON. Yes, sir, I think that is a very fair statement of it, that in case we find that this thing occurs, we want to show you that we have the machinery set up to take prompt and effective action where it is brought to our attention.

Senator KING. Have any steps been taken to remove Kunze, the head of the code authority in the case to which Senator Clark called attention?

Mr. NELSON. I just told you that I had first heard of this particular case when it was brought, and now the legal division, and my assistant, Mr. Gates, are at work drawing up charges, and if we can substantiate them on the basis of the evidence which we have, I say that if only to show you that we want to be absolutely fair to everyone concerned, if they can be substantiated, and our legal division advises us, a hearing will be immediately called to determine whether or not Mr. Kunze is a fit person to serve as secretary of that particular divisional code authority. Those papers are in the legal division right now.

Senator KING. You have heard the statements made respecting your compliance representative in the State of Minnesota. Have you taken any steps to inquire about the propriety of that officer?

Mr. NELSON. I have nothing to do with compliance. That is under Mr. Sol Rosenblatt, but knowing Mr. Sol Rosenblatt as I do, I know that he will take immediate steps to determine whether or not that particular person is qualified to carry on those particular responsibilities.

Senator KING. The facts were brought to the attention of the N. R. A. in Washington months ago.

Mr. NELSON. Which one do you mean?

Senator KING. That Kunze case.

Mr. NELSON. I have not any record in the Kunze case.

Senator KING. And Mr. Tracy's case?

Mr. NELSON. I do not know Mr. Tracy's case at all.

Senator KING. He submitted a bid in Minneapolis for printing.

Mr. NELSON. I heard him give his evidence, but I had never heard of the case until I heard him here before you.

The CHAIRMAN. All right. Proceed, Mr. Nelson.

Mr. NELSON. I think I have finished in my purpose, merely to show you these situations.

The CHAIRMAN. The committee is very thankful to you, and you have made a very fine impression on the committee.

Mr. Nelson. Thank you, sir.

The CHAIRMAN. The committee will recess until 2 o'clock this afternoon.

(Whereupon a recess was taken until 2 p. m. of the same day.)

AFTER RECESS

(The hearing was resumed at 2:15 p. m., in the District of Columbia Committee Room at the Capitol.)

STATEMENT OF A. J. HETTINGER, JR.—Resumed

(The witness, having been previously duly sworn, resumed his statement, as follows:)

The CHAIRMAN. Just proceed where you left off in your statement, Mr. Hettinger.

Mr. HETTINGER. I should first note an apology to Senator Barkley who asked me what would have been my opinion on the Securities Act. At the time it was passed I tried to start to formulate an opinion, but the honest answer should have been that I have not read the act, and it is complicated enough so that I should have to look it up first. I have hazy ideas, that is all.

To continue my statement, without troubling the committee, because I know that you will want to finish with me, and I will want to finish, I would like simply to submit for the record the remainder of this particular article in the Herald-Tribune of September 9, 1934.

The CHAIRMAN. Very well.

(The article referred to by the witness is as follows:)

ON EVERY CLEAR-CUT TEST THE NATIONAL RECOVERY ADMINISTRATION HAS WOBBLED

It has no price policy other than opportunism. In theory, having burned its fingers and those of the country, it is against price fixing—save possibly in the fields of wasting natural resources and natural monopolies. But it doesn't know how to undo what it has done. Its vacillation on price policy alone during recent months would be sufficient to condemn it.

CALLS LABOR POLICY "OPPORTUNISM"

It has no labor policy other than opportunism. There has been as many labor policies in the National Recovery Administration as there have been labor crises, and their number is legion. The respite of the day has been achieved by forcing labor and capital into horse trading, in which the National Recovery Administration sought to deliver what it could not deliver, and thus created the crisis of the morrow. Pyrrhic victories represent battles won and a campaign lost. Pyrrhus "was a brilliant and dashing solder."

On net balance, National Recovery Administration probably questions the contribution to the President's "more abundant life" of a series of provisions limiting machine hours and tending to retard new capital investment in plant and equipment. No nation ever increased or can increase the real income of its people, the "comforts and conveniences of life", as Adam Smith used to term it, by such methods. But how to drag such provisions from the codes—that is the question.

And in theory the National Recovery Administration is probably reluctant to declare upon the application of the code authority of an industry, that a so-called "emergency" exists in that industry—for that means aggressive National Recovery Administration sponsorship, backed by threats of loss of the blue eagle and of "economic death" itself to any firm that does not observe the "emergency order." That "emergency order" may force all companies in any industry to curtail operations, to close their doors, or to change the prices of their products—for the duration of the emergency. It is my sincere belief, after having observed the actual mechanics, that aspects of the public interest have been essentially tossed into the discard.

The line of least resistance is to grant such emergencies if the pressure be sufficiently great—even at the expense of gambling on its ability to ward off a major textile strike last June. And on that occasion after the damage was done and after the newspapers of the land had carried front-page headlines of an impending strike, as a partial concession to labor it asked its Division of Research and Planning to make the investigation that it had been begged to make before—an investigation that should have been completed before the so-called "emergency powers" were granted.

No one knows better than the operating personnel of the National Recovery Administration the utter impossibility of administering certain of the codes as written, codes that Mr. Walter Lippmann (June 29, 1934), aptly termed "half baked." But altering a series of approved codes, whose very cornerstone is the exchange of quid pro quo between industry, labor and the Recovery Administration, is not a simple task. Provision after provision has been bought with a great price; the National Recovery Administration forced industries to accept wage and hour provisions that would have been impossible had not National Recovery Administration repaid them by granting so-called "fair-trade-practice" provisions that are economically unsound and against the public interest as I conceive it.

Facts such as these cannot remain hidden. Only to the extent that they are recognized can they be remedied. General Johnson is a remarkable man of unusual ability. It would be less than fair not to recognize that he has given of himself unstintedly and with complete devotion to the Recovery Administration. I maintain, nevertheless, that no evidence exists which suggests that his great abilities (which are decidedly not of the policy-creating type) lie along the lines of formulating a policy that can salvage the National Recovery Administration

OFFERS 45 PROPOSITIONS

I hold the following propositions to be true:

1. That the National Recovery Administration has been and is Gen. Hugh S. Johnson.
2. That the general, a man of action and inspired by the best of motives, never thought this problem through.
3. That, as a result, National Recovery Administration's initial program consisted merely of a laudable objective: to put men back to work.
4. That a sound operating program by which this objective was to be obtained was never developed.
5. That the general, the personification of individualism, could not conquer that individualism. Policy-creating cabinets were organized, but tossed into the discard. To counsel required patience.
6. That the nearest approach to any operating program was the stern resolve to cut hours progressively, to increase wages progressively, and—when in a jam—to attempt to do more of the same thing.
7. That that policy, as pursued by the National Recovery Administration, constituted an admirable method of spreading work, increasing industrial costs, and adding to the cost of living. It certainly checked, even though it may not have mated, the heroic efforts of Secretary Wallace to increase the real income of the farmer.
8. That the National Recovery Administration confused the means with the end; the great goal became the codification of American industry by Christmas.
9. That the general, theatrical, colorful, and dramatic, sought to sell a program before he had created one. The result was a series of extemporized solutions of temporizing character. In the blue eagle we were to trust.

SAYS FORD DESERVES GRATITUDE

10. That Henry Ford deserves the gratitude of his fellow citizens. He met the wage, hour, and working condition standards of the codes, but had the simple American courage to stand out against the "cracking down" emotional

onslaught of last autumn—a real contribution toward eliminating the terrorism from the "blue eagle."

11. That the process of codification, in the absence of the development of underlying operating policies, inevitably resulted in horse-trading tactics. Industry, labor, and consumer were played off one against the other. National Recovery Administration followed the line of least resistance, its main objective being to chalk up code after code on the scoreboard.

12. That the general's brilliant skill as a negotiator, yielding sound economic policies at the altar of expediency, inevitably created problems in geometrical progression.

13. That the natural result of geometrical progression in problems created was geometrical expansion in personnel and expense in the effort to cope with National Recovery Administration created difficulties.

14. That both industry and labor, quickly perceiving that National Recovery Administration was ready to trade terms to get codes, took full advantage of the opportunities afforded.

15. That the "goldfish bowl" is a pretty figure of speech but an inaccurate description of the process of codification. The formal public hearings degenerated into a mere speaking for the record by the interested parties concerned. The National Recovery Administration had placed its stamp of approval on horse-trading methods; consequently all parties at issue merely desired to establish a maximum bargaining position at these public hearings. Codes were really made behind closed doors (as honestly as possible on a bargaining basis, but with a subordination of fundamental principles involved, administrative soundness, and at the risk of potential intercode conflicts), after what frequently developed into weeks or months of negotiation.

16. That formal hearings whose purposes were defined as "fact finding" made relatively little effort to determine whether the evidence submitted consisted of facts. Such effort would have slowed down the machinery. I doubt if any court in the land would have accepted such grossly inaccurate and unsupported statements as can be found in the official transcripts. The essentially honest explanation is that a testing of testimony would have slowed down proceedings and introduced a controversial element, would at times have resulted in internal strife between the various boards within the National Recovery Administration itself, and was deemed unnecessary—for the real work on the codes was done outside the "goldfish bowl" via protracted series of negotiations * * * The National Recovery Administration, chameleonlike, is too variegated a body to be described as a unit; exceptions unquestionably exist, but the statements here made are as true as any generalization can be.

17. That a professional can usually outplay an amateur. We in the National Recovery Administration were the amateurs, "codifying" hundreds of industries within a few months. We were outmaneuvered and the country is paying the bill * * * Quantitatively, it was a grand job.

18. That the National Recovery Administration codes have been far less voluntary than the average citizen has been led to believe. What has been grudgingly given under threat of greater punishment is hardly voluntary. The licensing provision, never actually used, has been a whip that has been cracked with consummate skill by the several ringmasters.

19. That, in the absence of any clearly defined policy, the codes became a jumble of price fixing, limitations on machine hours, limitations of output, hindrances to new capital investment and policies that conflicted, in general, from code to code and from industry to industry. Utterly unenforceable labor clauses were written into codes—the net result a disillusioned and embittered labor.

20. That every economic doctrine known to man, both sound and unsound, can be found in some one or more of this vast agglomeration of socalled "codes of fair competition."

21. That as a result of the very inconsistencies within the National Recovery Administration both defends and destroys 'the little fellow', that it tends to foster and prevent monopoly. In the multiplicity of its codes it is both a Dr. Jekyll and a Mr. Hyde. Clarence Darrow could really have done a much more effective job than he did.

22. That National Recovery Administration, having curtailed competition and granted quasi-monopolistic privileges to an industry, was too enmeshed in the cumbersome problems of its own administrative machinery to audit the application of that industry to utilize its hard-won code provision permitting it (upon National Recovery Administration approval) to declare an "industrial emergency" and curtail production or suspend operations entirely—in order to lift

prices. I quote verbatim from the New York Times of May 20; merely eliminating the name of the head of the code authority, the name of the industry and the amount by which he estimated production had been curtailed; because, after all, the primary responsibility is that of National Recovery Administration:

"Shutdown of * * * last week under the curtailment order was 100 percent successful, it was announced yesterday by * * * Code Authority. While the effect of the curtailment may not be great immediately * * * it is reasonable to suppose that the overproduction * * * was reduced by * * * and that this will soon be reflected by higher prices and a more stable market."

And these curtailments of shutdowns were labeled by National Recovery Administration as being "in the public interest."

23. That a National Recovery Administration philosophy which encourages restrictions in production and the maintenance of unduly high prices by administrative grants of power, runs squarely counter to President Roosevelt's concept of a more "abundant life."

24. That the National Recovery Administration codes, by sanctioning unsound labor and so-called "fair trade" practices, have rendered inevitable such increases in the cost of many building materials as to delay recovery in the all-important construction industry, and placed a heavy burden upon the President's Federal Housing Administrator, Mr. Moffet * * * The housing legislation, however represents the administration at its best. Both personnel and policies of the Housing Administration deserve commendation. The point I desire to make is that its problem has been rendered more difficult by the ill-advised actions of National Recovery Administration.

25. That in the whole field of labor relations the National Recovery Administration, true to its opportunistic creed, has sought the solution of the moment. It has dodged, boxed the compass and, to use an inelegant but truly expressive phrase, messed up the whole field of American labor relations, to the detriment of labor, capital, the body politic and the return of prosperity to this Nation. The general proved himself to be the master of crises of his own creation. The solution bred yet more crises.

26. That National Recovery Administration, whose internal confusions of policy were threatened to create a veritable Frankenstein, wasted a substantial proportion of its effort during the spring of this year in the mechanical job of grinding out essentially useless codes of hog-ring, corncob-pipe, and toll-bridge caliber. We were sturdily creating more confusion at a time when our vital need was to find a way to cut through the vast confusion we had already created * * * Parenthetically, portions of the official testimony in the formal public hearing to consider the "code of fair competition" for the toll-bridge industry, would make the New Yorker without editing. Such testimony was greatly enjoyed by a very imposing Government bench consisting of a deputy administrator, an assistant deputy administrator, official staff members of the Labor, Consumers', and Industrial Advisory Boards, a representative of the Legal Division and one from the Division of Research and Planning, a secretary, official stenographers, and I am not sure that even this list is complete. Not only the official transcript of proceedings, but official photographs are available to posterity, in case the latter should be interested. I am describing this as an official member of the Government bench. In self-defense I may be pardoned for stating that I had written what I thought was a trenchant and hoped was a logical plea against the utter waste of National Recovery Administration time and taxpayers' money in the construction of such codes; but the mills of the gods ground on.

27. That the National Recovery Administration approved scores of codes of fair competition for so-called "industries," no one of which employed as many as 1,000, and a number of them but a few dozen workers. Under such conditions even the spreading of labor was infinitesimal, but the creation of machinery requiring code authorities to administer and Government officials to supervise was a grand job-creating achievement. To reach a common-sense definition of what really constituted an industry required at least a modicum of planning—and planning sold at a discount when in competition with intuitive inspirations * * * Incidentally, some of the novel National Recovery Administration concepts of economics are found in such codes.

28. That the National Recovery Administration by arbitrary North-South differentials, by arbitrary differentials between small towns and large cities (differentials based on guessing and bargaining rather than on known facts) and by numerous other arbitrary rulings, has imposed conditions determining whether or not a multitude of small concerns can live, and has thus become the arbiter of life or death for many a business.

29. That National Recovery Administration promised much and performed little in the field of compliance. In extenuation, it can be stated that it is impossible to enforce a code that is utterly unsound from an economic viewpoint. Stated with the utmost seriousness, I doubt whether the entire police powers of the United States Government could have enforced the National Recovery Administration codes as a whole in any thorough-going fashion.

30. That lack of enforcement penalizes the honest employer and gives an unjustifiable economic advantage to the noncomplying employer. The National Recovery Administration has created the "chiselers" it so vociferously condemns—and tolerates.

31. That laws must depend for their sanction upon the approval of the community. National Recovery Administration codes are the laws of the land, and certain of these code laws have bred lawlessness, simply because in the eyes of the community, or the particular portion of the community affected, they have been neither sound economics nor sound ethics nor sound common sense.

32. That the punitive blue eagle can and has, as in the case of the Harriman Mills (and without evidence that the U. S. Department of Justice deems sufficient to serve as a basis for prosecution), controlled the destinies of an American enterprise. That same power and those same methods constitute an extra-legal threat overhanging business today. It represents the more subtle aspects of "cracking down."

33. That the National Recovery Administration has created huge supergovernments in its code authorities at a time when it is not in a position to guarantee proper use of these powers. The National Recovery Administration cannot guarantee to business and to the consumer protection against abuse by any given code authority because of the utter confusion with National Recovery Administration itself. The American consuming public has no concept of the many tens of millions of dollars of direct code administration expense it is called upon to support, and the indirect may well exceed the direct cost.

34. That a definite and appreciable proportion of the summer slump in business, so disturbing to the country as a whole, can be laid right at the door of National Recovery Administration. Code provisions in certain major industries encouraged and rendered inevitable a very great overproduction in the spring, and utter stagnation during the summer—a situation which will continue in such industries until excess inventories have been absorbed.

35. That National Recovery Administration's incursion into and rather ragged retreat from a portion of the service industry field (as cleaners and dyers) constitutes merely one example among many indicative of unwillingness to think through the problems confronting it * * *. I quote briefly from Philip Cabot, Harvard Business Review, January 1934:

"* * * If a relatively small number of basis industries can be organized under such codes, and if industrial statesmen of great ability can be found to assume control of these new trade associations, a long stride toward the solution of our problem will have been taken. Whether any effort should be made to organize all the little industries of the Nation under such codes is more than doubtful. Few of them have even the sound materials out of which trade associations can be built. The operation of the units that compose them are purely local, so that national regulation will prove difficult, if not impossible. The number of independent operators in some cases is vary large—there are said to be 1,500,000 units covered by the retail code—and the difficulty of centralized control of such a system will increase as the square of the number of units to be regulated. Efforts to bring all industry under these codes are likely to suffer the fate of the Volstead Act, and might result in discrediting the whole principle on which these codes rest. This would be a national disaster."

36. That National Recovery Administration has been and increasingly is a big, unwieldy bureaucracy, which never has had, and has not to this day, a clear conception of industry or a philosophy on the basis of which it can hope to attain the ends which might rightfully have been expected of it. Air pockets abound in its economics.

37. That the morale of the personnel of N. R. A. has been substantially broken for months. Probably no organization ever operated with more courage, intensity of effort, and utter disregard for length of hours during the high-pressure drive of the first few months. That organization, granted any sound policy on the basis of which to operate, could have matched performance with anything I have ever known in government. Its breakdown is a tradegy. That breakdown became progressive with the spring months. The inevitable had merely happened. Codes conceived in inspiration and formulated in opportunism had merely come home to roost.

38. That saving the N. R. A. has become a salvaging operation. The New Testament tells of a man who 'built his house upon the sand; and the rain descended and the floods came, and the winds blew, and beat upon that house; and it fell; and great was the fall of it.' So with the portion of N. R. A. that, spurning the opportunity to be 'founded on a rock' chose the more rapid construction methods afforded by a sand foundation. It, like the man in the Testament, erected the structure. The storm has raged, the N. R. A. lacks the foundations of sound policy, or of any policy other than opportunism, and it is definitely crumbling. It was inevitable; it was foreseen by some of the wisest men in the administration, but the machinery and a superbly charging leadership were such that it had to run its course. That course has been run.

39. The N. R. A. can be salvaged. It will never be the structure it might have been. Patching is difficult, expensive, demoralizing, and disturbing to those affected by it—whether labor, capital, or consumers. On net balance, both labor and capital have protected themselves fairly well—the chief sufferers have been the consumers and the trend toward economic recovery. Admitting the very sincere efforts of the Consumers' Board of the N. R. A. the consumer is the forgotten man.

40. That the salvaging of the N. R. A. must result in simplification if anything is to be saved. The task will be far from easy. A few policies that are economically sound, ethically right, and administratively feasible must be fought out and determined upon. Simplicity, flexibility, common sense, and adherence to these few sound principles must displace literally thousands of impossible "thou shalt" and "thou shalt not" clauses. Decisions must be based upon what is right rather than what will "get by" this or that board or administrative officer. I hate to think of the number of times argument on the soundness of a policy has been foreclosed by the statement: "You can't do that; it won't get by." That was the final answer.

41. The salvaging of N. R. A. in the political atmosphere that now surrounds it, and in the presence of the vested interests it has created with respect both to labor and capital, will be a task comparable to that of the camel passing through the eye of the needle. The approach of the political campaign complicates the matter.

42. That much potential good, though, unfortunately, somewhat less real accomplished good lies in the best of the wage, hour, and child-labor provisions. These can be made workable; in many cases they are not that. It may well be that such provisions should be transferred to the Labor Department.

43. That to the extent the N. R. A. code problems are administrative in character the Commerce Department might well receive the heritage.

44. That "fair-trade practices" constitute, in many respects, a quasi-judicial problem. The N. R. A. of today is neither judicial or quasijudicial. It is opportunistic, seizing the solution for the day even though it may double the problem on the morrow. The Federal Trade Commission is a quasijudicial body; whether or not it would be wise to consider intrusting this phase of N. R. A. to the Trade Commission is a matter worthy of consideration.

45. That unless N. R. A. can be reborn with a chance of obtaining a fair proportion of the real objectives that underlie the concept of the Recovery Administration it would be far better to divide it, paraphrasing Caesar's description of Gaul, into three parts, and to apportion these to the Labor Department, the Commerce Department, and the Federal Trade Commission.

The above propositions I hold to be true. They have been stated briefly—in so doing the half has not been told.

Mr. HETTINGER. For the benefit of the two gentlemen of the committee who are here today and who were not here yesterday morning, I would like to summarize——

Senator CONNALLY (interrupting). Do not repeat anything for my benefit.

Mr. HETTINGER. I could do it in just about half a minute.

Senator CONNALLY. I can read the record.

Mr. HETTINGER. I believe that the N. R. A. because of the fact that it is on the defensive in the situation has naturally and officially had to take positions that do not give a clear picture of the situation. I want as impersonally as possible to diagnose the situation as I see it, because I think someone has to do it, and all that I can do is to do as well as I can.

Senator KING. Before you proceed, not having been here yesterday, having been called out of the city on account of sickness in my family, did you when you were on the stand analyze the operations of the N. R. A. and point out its virtues and its vices, if it has either?

Mr. HETTINGER. I did not. I was on the stand a short time at the close of the morning, Senator King.

Senator KING. Do you care to give your views based upon your contacts with the N. R. A. and the codes, and so on, as to its operations and the effects of it and the consequences of it?

Mr. HETTINGER. All right. I think that you have placed on the statute book what I believe the American Bar Association estimated at some 10,000 pages of laws which are spotty in character and which were legislated, as it were, under a grave emergency.

Senator CONNALLY. Are you talking about the N. R. A. now?

Mr. HETTINGER. The codes of the N. R. A. They involve every brand of economics known to man, both good and bad. The codes were driven through very rapidly with the desire, if possible, to do the job by the end of December 1933.

An organization that as individuals was superb, hard working to the limit, and far beyond the average in conscientiousness, but no underlying operating philosophy formulating the particular codes, it inevitably was on a horse-trading basis. You had two strong representatives, labor and capital, in each case. In certain cases labor was the stronger, and in certain cases capital was the stronger. You had a very weak consumer representation, simply because there was no organization back of either of those. You had deputy administrators working unsparingly trying to drive those codes through, with the pressure on time schedules, and the public hearings became in many instances very nearly farcical in character.

I would like to develop for a few moments just how a code is built, as I see it.

"A representative group", so called, of industry, submit the code to N. R. A., they were probably referred to a deputy administrator to whom it was assigned, there were informal conferences with him in which the worst of the difficulties were ironed out, and after the thing had got along far enough so that there was prospect of getting somewhere, there was what might be termed a kind of a full-dress rehearsal before the public hearing.

At that time, I believe, usually, you would have the code committee or the committee proposing the code down, they might have been down anywhere from one to a dozen times before. With the deputy administrator and his assistant usually, the representative of the legal department, probably labor, consumers, and the Division of Research and Planning, that code would be gone through section by section, and each of those N. R. A. advisers had the opportunity to reflect as well as possible the position of himself and primarily of his particular board; the labor adviser, for instance, reffecting the position of the Labor Board as he gaged it, to interpret its provisions.

If the difficulties of reconciling the divergent elements seemed too great, the deputy administrator would start over again, continuing his negotiations with the code committee. If on the other hand, there seemed to be a fair prospect that there was not too wide a divergent interest primarily between labor and capital, giving the least weight to the Consumers' Advisory Board and the Research and Planning Division, then you would have your pubic hearing.

At the public hearing, all of those I have mentioned were present, together with the general public and the interested parties. Some hearings were about as big as a good-sized football rally; some hearings, if it were a toll bridge code, or any minor code, were attended by very few.

Senator KING. Generally, who drafted the code? Was it some particular branch of the industry? For instance, take the steel code. Who drafted it? Or the oil code?

Mr. HETTINGER. When you ask me about certain specific codes, I would have to rely on my own narrow experiences; but the code would have to be presented by a representative group which was termed to be the preponderant group in the industry. I do not want any implications there. That preponderance would presumably mean a majority numerically of the units of the industry and a majority from the point of view of the capital involved, or the employees. There is no rigid limitation, I think, but the legal department would stand upon the representative character of it, and I think probably some of the other divisions preparing the material—the Research and Planning at times preparing the basic material on which the legal department rested its opinion.

The public hearings were driven through with tremendous rapidity in the aggregate. If I can turn for a moment to the report of the operations of the National Industrial Recovery Act prepared by the Division of Research and Planning, the first 100 codes were approved by the 8th of November 1933. The act was passed, I believe, on the 16th of June, and it is my impression that the Textile Code is the first of the codes, and the Cotton Textile Code was adopted rather early in July.

The first 100 codes, then, were put through in 145 days. The second 100 codes were put through in 65 days after that. There may have been overlapping at times; 38 days later the third 100 codes were reached; 60 days later, the fourth 100 codes were reached; 110 days later the fifth 100 codes were reached.

I think it is probably fair to say that there was no thorough consideration given of what represented an industry. You will have anything from the steel industry or the electrical industry, tremendous aggregates on the one hand, down to one single code with just 45 persons in the industry.

Senator KING. Was that the Pencil Code?

Mr. HETTINGER. No; it is not; I could check it up. It is mohair, or something of that type.

And there were a voluminous number of codes that represented insignificant—from the point of view of economic strength—segments of the industries. I think that the reason for that was the fact that working under pressure, and allowing the groups to bring in their own codes, and placing the thing on a horse-trading basis—probably clean horse trading, but nevertheless horse trading—with no philosophy on the part of N. R. A. as to what was meant by a fair-trade practice, you had each segment varying a trifle from another segment, each segment wanting some special provisions in its codes that the other segment did not have. Some of those may have been inconsequential.

Some of them would run into your price fixing or price control or production control, but a kind of umbrella was held up many a time to

give something especially wanted by one group that was not wanted by another.

To have taken an industry, as we would normally think of an industry, and build up a fine, structurally sound code, would have meant the necessity of coordinating and reconciling differences within that industry, taking the broad sense of the term. That would have taken time. I think it would have been the better way of doing it, but the decision was for a tremendous premium on time. That was the crisis emergency complex; rather than take the time for the doing it in that way, to let each little segment in many cases bring in its own particular code.

As you begin to appraise things, we reached a stage where the public hearing tended to degenerate into a big circus, in which labor asked for much more than it ever expected to receive, simply to establish a vantage ground from which it could trade down—I am not stating that critically—and industry presented a greater picture of its difficulties than probably existed, because it knew that it would have to recede from that.

You had rival boards of the N. R. A. on the floor, with privilege, in theory, of cross-examination—at times a great deal of cross-examination—but such conflicting interests that there were times when the deputy administrator—and there is no criticism here—in the interests of living up to a schedule that was deemed sound, would suggest to the labor representative, the consumers' representative, the representative of Research and Planning, "Do not cross-examine, or cross-examine as little as possible, because we want to get this hearing through."

The rule of code making after those early stages was the antithesis of a goldfish bowl. The goldfish bowl was a front, if you want to treat it as such. The public hearing did conform with the law; it conformed with the general's concept of doing things in the open, but it did not work out as a way of making codes; and after the public hearing, then the deputy administrator would negotiate with his industry. Sometimes it might take very little time, and sometimes the negotiations ran over months; there are some codes where I think it probably ran 6 months or more. If those codes had been put through; there was trading back and forth of labor, industry, consumers, and so forth, depending very largely on the pressures back of each of those groups, and depending in part on the skill and the courage of the deputy administrator, and finally the code was driven through.

Senator KING. Let me ask you a question. Were not some of the deputy administrators identified with industries?

Mr. HETTINGER. I think that it probably would be——

Senator KING (interrupting). Industries which got codes?

Mr. HETTINGER. I cannot answer that definitely. That would be a matter of record that could be checked up easily.

I will say this: By and large, I have no criticism whatever of that deputy personnel. I think that very likely some of them came from a given industry, and because of the familiarity with that industry were placed in charge of those codes. I think that certain of them went from their position with the N. R. A., the position of deputy administrator in the formation of a given code, out into that industry. They had made a good impression on the particular industry and were offered jobs there. That is inevitable.

But you had substantially a clean, fine, courageous, hard-working group, but along with that you had no organized procedure. Your codes overlapped tremendously. We had no such thing as an understanding of what the fundamentals were in connection with the so-called "North" and "South" differentials, drawn differently in various codes, in part, because the North and South, from the point of an industry, will not coincide with the Mason and Dixon's line; but in part, also, it is a bargaining process.

In the Research and Planning, one of the basic early studies that we should have made would have been a study of the fundamentals involved in the North and South differentials, a study of the fundamentals involved in the wage differentials between very small-sized towns, medium-sized towns, and large cities.

We did not have time to do that, we were rushed, and frequently we were working out industries that we had no familiarity with. I say that about myself personally. I was drawn into discussions and conferences in connection with industries that I knew nothing about, and there were at least occasions in which the representatives of the industry practically had to instruct the so-called "expert advisers" on Research and Planning—and this indictment is against myself, too, because I was one of them who needed instruction. The consumers' representative, the labor representative, and essentially the legal representative—we had to learn what that industry was, how it operated, what its problems were, because we were supposed to pass judgment upon it.

As a result of that you had a group of the finest amateurs in many respects that I have ever seen pitted against professionals in doing a job.

Senator COSTIGAN. For what industries do you especially speak?

Mr. HETTINGER. I think that that would probably hold in spotty fashion throughout. I was drawn in on a miscellaneous group of conferences. I had originally no definite assignment.

Senator COSTIGAN. With what codes are you most familiar?

Mr. HETTINGER. I would say that I think I was drawn in in connection with the Cleaners and Dyers Code quite a little. At various times in connection with the operation of the textile codes. I was drawn in about the 1st of December into a group of public-utility codes. I participated in the conferences at the time of the so-called "rubber emergency", and it was a miscellaneous group of what you might term "pinch-hitting." The largest individual assignment which was interrupted frequently, the public-utility codes, began the latter part of 1933, and is as yet uncompleted, from the point of view, at least, of becoming operative.

Senator COSTIGAN. Have you been connected with the durable goods and heavy goods industries?

Mr. HETTINGER. I am temporarily the executive secretary of the durable goods industries committee. That is the official status. Does that answer your question, Senator?

Senator COSTIGAN. Have you had any special connection with the codes for those industries?

Mr. HETTINGER. I do not recall offhand any special connection with those codes.

Senator COSTIGAN. It is my understanding that you testified on your earlier appearance that you had spoken to the chairman of the durable goods industries committee before coming here?

Mr. HETTINGER. I spoke to the chairman of my durable goods industries committee, yes, sir.

Senator COSTIGAN. Who is that?

Mr. HETTINGER. George Houston.

Senator COSTIGAN. Do you specially represent his viewpoint?

Mr. HETTINGER. No, I stated in the earlier proceedings that I represented primarily my own viewpoint, but that before I finish I wanted insofar as possible to make the position of the committee clear, and that I would indicate when that was done.

Senator COSTIGAN. Referring to Mr. Houston, do you know whether he has settled convictions which are opposed to minimum wages and maximum hours?

Mr. HETTINGER. I can state that in part, I think. I doubt if he has settled convictions against minimum wages. I am very sure that he feels that at the present time hours have been so shortened in connection with those wages that unit costs have been lifted in heavy industries to such a point that the markets are narrowed. Of that half, I can speak with assurance.

Senator COSTIGAN. Is he opposed to N. R. A. and its extension?

Mr. HETTINGER. No, sir.

Senator COSTIGAN. Are you?

Mr. HETTINGER. No, sir.

Senator COSTIGAN. Are you in favor of both?

Mr. HETTINGER. Now, I want to make that perfectly clear. The position that Mr. Houston has taken has been taken in connection with various business groups and is a matter of record. I believe that that is a 1 year's extension with certain other things. I think that Mr. Houston's feeling would be a question as to whether N. R. A. was sound legislation, but his position is thoroughly a matter of record, as he is one of the officials of the National Association of Manufacturers, and if you check up the statement of the testimony of the record of their meetings, that would be his position.

Now, I want to state my own conviction very frankly. I question the soundness of N. R. A. as now set up. I hoped for a very different kind of an N. R. A. in the early days. I believe there is an opportunity for something along those lines. I doubt seriously whether this present N. R. A. will work, assuming that it is extended—I sincerely hope I am wrong—but as an honest man, I would have to state that I seriously doubt whether it will work. I have certain constructive suggestions, at least they so seem to me, that I will want to make before I am through, in case the N. R. A. is extended.

Senator COSTIGAN. Are these suggestions your views or Mr. Houston's views, or the views of others, and if so, whose?

Mr. HETTINGER. When I took my present job, which is a temporary one, I said that the only basic requirement that I laid down is that I be able to tell the truth as I see it. You need have no doubt for one moment on that score, Senator. I express my views except insofar as at the beginning of my testimony I stated that before I was through I would like to interpret as well as possible the committee's.

Senator COSTIGAN. I am not questioning the views or the sincerity of them. I wish merely to know whether you appear in a representative capacity or as a spokesman for yourself?

Mr. HETTINGER. I am appearing at this stage of the game as a spokesman for myself and will indicate when I deviate from that.

The CHAIRMAN. You would rather not give your constructive views at this point?

Mr. HETTINGER. I want to come very quickly to that, Senator. I have practically two or three objectives. The first is that I want to make an effort to present the N. R. A. as I see it. The second of them is that I want to state very frankly my criticism as to whether the present N. R. A. will work out, because I do not believe that it will. I feel it is so complicated, there are so many internal conflicts, so many brands of economics, sound and unsound, that I do not believe it will work. I think that you can give it legal sanction and that it will prove as difficult or impossible to carry through over a stretch of time as your prohibition law was.

Then, as to the third point that I want to bring out, I feel that the N. R. A. has been unable somehow to present to the President and this committee and the country a picture of the thing as it is.

As to the constructive suggestions, if the National Recovery Administration is to be continued substantially along the lines of the new legislation, then I would suggest, first, that you establish the equivalent of a bureau of economics. You can term it your "Research and Planning", on materially a different basis than it now exists.

I want to pay at this stage a real tribute to Leon Henderson. I worked under him. He is clean, and he is honest. I think that one would probably—this is my opinion—rank his line of sympathies as the consumer first, labor second, industry third, and I am not at all sure but what that is a fair ranking. He has a department that has some very able men in it. I worked with him, and I admire most of the ranking members, but I am going to submit, with all of the strength that I can, that that department has not been in a position to do independent work and have that work come out to the country without being emasculated.

You can have two concepts, practically speaking, of what will make N. R. A. successful. If your concept is that primarily what you need is a maximum of law, a maximum of legal sanction, and that you can force the economics, like a square peg into a round hole, and so forth, then you can get along with a Research and Planning Division that is without some measure of autonomy, and get along with one whose work is emasculated and that feels internal pressures within N. R. A. to such a point that the intellectual integrity of the output can be challenged.

I hold that your N. R. A. experiment, which is probably as momentous an experiment as you have in this "new deal," rests upon a basis of economics, and that it is impossible over a stretch of time to make unsound economics work; that the codes were thrown together so rapidly with two interests preponderant, capital and labor, that you have unconsciously, but nevertheless very thoroughly created vested interests that run through code after code after code. The privileges in those codes have been bought with hard effort.

Your code committees were down week after week, had heavy legal expenses, bargaining such and such trade practices in exchange for such and such labor position, with the effort to drive the code through rapidly, and far too much emphasis on industry's particularistic welfare, far too much emphasis on labor's particularistic welfare, and a kind of an umbrella over both that frequently has left what I might term the public welfare and the consumer welfare out of the

picture. And if I should be right in the belief that I strongly hold, that you have got to have sane and reasonably sound economics in a code structure, then I think that your Division of Research and Planning should possibly approximate the position with respect to N. R. A. that the Bureau of Agricultural Economics would occupy with respect to the A. A. A., go closely together, working in the same field, but an absolute independence that comes of certain checks and balances, so that the work that it puts out is intellectually honest and sound. Before I am through I want to go into that in some detail, because I think that that is one place where a fair man can bring a very strong challenge against the N. R. A.

The second suggestion that I would make is that if N. R. A. is to continue, approximately as is, that the Consumers Division have real and additional strength. Each person in connection with N. R. A. might have a different viewpoint with respect to possibly who the hero of that drama was. As far as I am concerned, I think that Mary Rumsey was. She probably did not know a great deal about economics. I am not sure how much she knew about organization, but she just simply knew, she felt instinctively, that in the pressure trading of conflicting industry and labor interests, with strong interests back of each of those, that the consumer was receiving relatively little attention. She did not know how to get that attention for him, but she was on the job fighting for it, getting knocked down, figuratively speaking, and always coming back to bat. I had no direct contact with her in Research and Planning; yet with no direct contact with her, I was deviled more, if you can use that term, in a pleasant sense, than a little, time after time. I was no different than anyone else. Anyone in N. R. A. who had any opportunity of possibly doing something for the consumer, she was back of.

The treatment of the consumer in the first several months—and there was no intention to discriminate against the consumer, but it was the inevitability of the type of machinery and the job that we were doing—was such that by the close of 1933 there were many and strong complaints against the tremendously rapid rise in prices that had occurred in a great many products produced under codes, and we had our first code price hearing.

I think that that was really the first time that the consumers group got any appreciable recognition, and it was relatively small at that time. There was a feeling within that group pretty strongly then. We adduced a great deal of evidence. We did very little about it, except digging a little at this code or that code or another code, and that process was continued in the early code hearing of this year, but by and large the consumer interest has not been carred for adequately to this time.

So that those would be the first two suggestions. The Division of Research and Planning is potentially a superb instrument, making some mistakes; give it enough autonomy so that it is not made against its will into an organ of propaganda in form, and strengthening the consumers division.

The third suggestion that I would make would be that the number of codes should be skeletonized. Ten thousand pages more or less—I have not counted them, but I am using what I believe was the American Bar Association estimate, and it is subject to correction to whatever extent is necessary there—10,000 pages of code law,

built as that code law was built, with no real system in the thing—overlapping codes, tremendous variations of all kinds throughout them, has created anomalies that are not in the public interest and that are not structurally sound.

I would have no basis for saying how many codes there should be, I think that at a guess I would say that if you had 50 or 60 codes; codes that represented an industry, and not a subdivision of a subdivision, or a sort of a subdivision of an industry, 50 or 60 codes of the major industries, carefully put together, honestly put together, weighing the public interest, first, last, and all the time, and fit into a pattern that meant that you had a system.

The essence of system is orderliness. The essence of our codification, and we worked like dogs and worked honestly, was disorderliness. So that that would be my third suggestion.

Senator COSTIGAN. What is your test of the public interest?

Mr. HETTINGER. My test of the public interest, primarily, Senator, would be fair competition, and I emphasize competition. I believe that an economist's definition, probably, of monopoly would be such substantial control of output that by controlling output you can exercise a real influence on price.

I think old Richard Ely remarked that a third of a century ago.

I would hold that any time you deviate from clean, complete competition, that at that time the Federal Government, through its N. R. A., assumes the responsibility and should be able to prove to its own conscience and country the justification for that.

Having taken that ground, in the first place I believe that one has the right to challenge provisions against the erecting of new factories. Those are not found in many codes, but you have them. When in order for me or any other citizen in this country to construct a new factory, it is necessary for me to gather material together, to present that material to a code authority consisting of men who will be my competitors, and if I am denied the privilege of establishing that factory, have that gradually go from that code authority to the Administrator, who here in Washington rules on the public necessity or the usefulness or whatever term you want to use, before a factory is put up in Duluth or Dallas or Detroit or Dubuque, I say that there, prima facie, you have something against the public interest; and yet, in 1 week in which you gentlemen have been sitting here, in one industry—and I say here that I am exaggerating, because I am picking the extreme instance—you will find in the ice industry eight American citizens refused the privilege to engage in that industry, and my source for that is the Blue Eagle, which is the official organ of N. R. A., under date, if my memory is correct, of the 15th of March. That is right while this committee has been in session.

The CHAIRMAN. Would you eliminate many of these industries that are wholly intrastate?

Mr. HETTINGER. Senator, I would like to read one little paragraph. I was in New York a while back, and I wandered around Gabriel Welles. I have not much money, but I happen to like Jefferson, and among his unpublished letters, I find one that he wrote when I believe he was 82 years old or thereabouts, in the last years of his life. One of his friends had written to him at Monticello and asked his opinion on certain of the issues of the day, and if you realize that this is the phraseology of that period, I am going to say that I am a Democrat, and I hope substantially a Jeffersonian Democrat.

We adhere strictly to our old-fashioned politics of maintaining the rights of the States in whatever concerns the State alone, considering the general government as but our department for foreign affairs and for those which concern other States—

meaning nations at this point—

that that branch of the Government has no powers but those enumerated in the Constitution. We adjure the doctrine which destroys these limits and permits them to do whatever they say, for it is for the general welfare, and we shall see in time whether the new coalition of Eastern and Western States will improve our republican principles or whether they will promote the general welfare by releasing those charged with it from all other limits than their own opinion of what is for that general welfare. I hope, however, we shall go on cordially with the majority until that majority sees that it is going wrong and returns to the old principle of limited government.

And if I can save enough money to afford to buy that letter, I am going to.

Senator COSTIGAN. In what year was it written?

Mr. HETTINGER. The 23d of June 1825, at Monticello, Va.

The CHAIRMAN. Do you think that answers my question?

Mr. HETTINGER. As far as the philosophy is concerned; yes, sir. Of course, when you ask me about intrastate and interstate, Mr. Richberg had a difficult time with your committee, and he is a very fine and able man. I am substantially ignorant there, but I would say that when these codes did legislate nationally from Washington, with respect to cleaners and dyers and barbers and butchers and all minor things of that kind, I question their soundness, and I believe that the thing will break down administratively.

I would lean toward covering major industries; I would not endeavor so to blanket the country that I could say that I have 98 or 95 or 90 percent, if I have bought those last percentages at a price great enough to wreck the act; so, as a layman, I would be inclined to think that was stretching the Constitution further than I would want to. Does that answer it?

The CHAIRMAN. It answers it about like Mr. Richberg answered. [Laughter.]

Mr. HETTINGER. If I had about one-tenth of his ability, that would be fine. Mr. Richberg would lean toward exceeding the power of the Federal Government, and I would lean toward the reverse.

The CHAIRMAN. As I understand it, you think it ought to be confined, so far as these voluntary codes are concerned, to strictly interstate commerce?

Mr. HETTINGER. I would incline that way. You have no rigid line. I would say also that in part there is something of a misnomer in the voluntary code. There are some of these codes that have been, in effect, as voluntary as a shotgun wedding.

Senator KING. Did you discover, corroborating that view, or rather, amplifying that view, that in some codes a dominant element in an organization or industry, or, to use your words, a dominating segment in industry controlled in the formulation of the code?

Mr. HETTINGER. I will not state that, Senator King. I will say this, that with six or seven hundred codes, I think you will find a scattering, that you will find cases where that is true, and cases where it is not true, that you will find every brand of economics and every brand of administrative procedure in the thing.

That much I would feel substantially certain of, but I would like to be the last one to imply that the code structure as a whole, or substantially was controlled by dominant interests in any particular industry.

Senator KING. Do you favor incorporating in any code, provisions restricting production or tending to price-fixing?

Mr. HETTINGER. I had answered with respect to production first. I would like to submit a bit of information on limitation against new industries for the record later, if I may.

Senator KING. Yes; you may do so. But if you can answer that question categorically, I should be glad.

(Mr. Hettinger subsequently submitted the following information:)

TYPICAL EXPERIENCES OF CITIZENS BARRED BY CODES FROM ENGAGING IN ICE INDUSTRY

George Black, Toledo, Ohio, was a large purchaser of ice. When the Ice Industry Code went into effect, the ice manufacturers in his area formed a combine and raised the price of ice to a point where Black could not purchase and remain in business with any profit for his efforts. He built his own ice plant to supply his requirements. He has been prosecuted in the courts by the Ice Industry Code Authority and badgered with threats of reprisal for violating article XI. The Federal court hearing has been continually postponed for almost a year and has not yet been heard. Black's loss has been substantial.

Sam Woodruff, small fish dealer of Peoria, Ill., has been trying for over a year to invest his savings in an ice plant for whose product he feels he has a certain and profitable market. Woodruff states that the local ice group continually blocked him by threats of what would happen if he ignored article XI. After continuous fighting, Woodruff has finally secured permission within the past 2 weeks to build his plant.

Ferlise Ferlice, Italian ice peddler of Lakeland, Fla., wanted to build an ice plant with his savings and those of several of his compatriots. High prices for ice in his area offered him this opportunity. Prosecuted by National Recovery Administration for violation of article XI, Ferlice's case is now in the hands of the Federal Trade Commission for decision. No decision has been handed down yet. Suit has been going on for over a year at a substantial cost in attorney's fees and court costs to Ferlice.

W. C. Gaston, garage operator, Ethel, Miss. Gaston and his neighbors found difficulty in securing ice at a reasonable figure from ice-plant operators in the neighboring towns. Gaston decided to build a 2-ton plant to serve the needs of his neighbors in this small community. He had a certain and profitable market at a lower price than his friends were paying, and, in addition, could offer better service. The present ice suppliers admit that their service to this village is poor, but to this point they have successfully blocked Gaston from proceeding further with his plans.

D. M. Jones, an experienced ice-plant operator in Texas, wished to build a plant in the neighboring town of Temple, Tex. He contracted for machinery, made a substantial down payment, and proceeded with erecting the necessary building. When the building was partially completed, the local ice industry code authority, through the local courts, enjoined Jones from proceeding further with his plans. He was haled into court for violation of article XI of the Ice Industry Code. His building is still uncompleted. He has not had the delivery of his machinery. He has not manufactured or sold 1 pound of ice in this proposed plant. Jones had merely indicated a desire to enter business in this small town. But please note that even to entertain a desire to enter the ice industry is a crime under the wording of article XI of the ice industry code.

The Flakice Corporation of Brooklyn, N. Y., has a new process for manufacturing chip ice, suitable for icing fish, vegetables, meats, etc., at a low cost. This process is ideal for use by truck gardeners, fish dealers, farmers, and other small business men. The new process was ready for extensive marketing about the time article XI became effective. The Ice Industry Code Authority made every effort to stop this progressive step in ice manufacture, following its program to protect obsolete plants and maintain high prices. The Ice Industry Code Authority is constantly harrying this new company, which continues to fight vigorously for its economic life. Were it not for the constant subversive

tactics of the Ice Industry Code Authority, the machines embodying this new process would now be in substantial production, reemploying a considerable number of men and bringing a decided benefit and saving to the consumers of crushed or chip ice. Mr. Crosby Field, president of the Flakice Corporation, can give ample testimony of high-handed activities on the part of the Ice Industry Code Authority, which are almost unbelievable in a democratic State.

While the Senate Finance Committee is investigating National Recovery Administration, the National Recovery Administration continues to deny citizens the right to engage in the ice industry. The Blue Eagle, a National Recovery Administration publication, in its March 15, 1935, issue, lists denials of permission to eight citizens located in Texas, Arkansas, Pennsylvania, Wisconsin, Georgia, and South Carolina, to operate small plants ranging in size from 4 tons to 20 tons.

Mr. HETTINGER. With respect to establishing new business, I would say that I feel it is unsound to have any of that in codes.

Senator KING. That is, to prevent the establishment of new business?

Mr. HETTINGER. Yes. As an individual, I would go so far as to say that I believe it is against public interest to say to a man that he cannot add to his capacity, that he cannot buy net new machinery or things of that type. To me, those things are the antithesis of the President's abundant life.

They are things that tend to perpetuate the inefficient, and at times the monopoly in business. They are like the wheels of the clock being turned backward, and savor of a scarcity philosophy rather than the kind of a standard of living that I would like to see.

So that as to the second point—expansion of facilities—I would oppose a limitation on that as an individual.

As to the third point, production control, I am opposed as a matter of principle to any production controls. The essence of monopoly is such control of production that will make it possible for you to alter price. I recall very clearly last year in May, where an emergency was granted to one industry permitting that industry to close down operations 100 percent for a week, meaning no labor pay envelop in that time, that the code authority shortly afterward, if the New York Times quoted him correctly, rather boasted to his industry that they would be repaid for that shut-down, which prevented a substantial amount of goods being produced, by having a lift in the price because things were not produced.

There to me is an example. If you permit the control of production, a limitation on production, you have a code authority saying, "The reward you get for shutting down that period of time or curtailing supply is a higher price for the public to pay."

Senator KING. You penalize the public by that policy?

Mr. HETTINGER. You penalize the public by it. I would say if you are going to do that, you need an N. R. A. that is simplified, stripped down to a number of important codes, with a strong Division of Research and Planning, because it is a tremendous responsibility to an outside man, snap judgment, and I have been in one major discussion where our decision approached that—I would not say was that—but where our decision was made, or the N. R. A. decision, was made, on the basis of entirely inadequate information. It was an honest decision. I happened to feel that it was against public policy.

Senator KING. Where is there any constitutional authority for such limitation?

Mr. HETTINGER. Senator, I am not a constitutional lawyer.

Senator KING. Where is there any authority in economics for it?

Mr. HETTINGER. The only authority that I could imagine might be in the case of your so-called "wasting of natural resources." I have a doubt in my mind, I feel that we do not know enough about that to decide, but I would want to be shown there. But you have raised that question, and I should like to mention one little thing here. There was a colloquy about fish and kingfish here yesterday, and I want to show how I think you tend to put in a permission and then have that permission abused. I might quote here from the Blue Eagle of July 23, 1934, "Mackerel fishing." The thing is rather long——

Senator KING (interrupting). It was put into the record yesterday, I am told, a paper which had been produced by the Consumers' Advisory Board and which I had selected for the record.

Mr. HETTINGER. The result of it was, the men lost their jobs.

Senator KING. And the people paid two or three times as much as they ought to have for mackerel.

Mr. HETTINGER. I would like to read, with your permission, just a few words on this: "In order to conserve natural resources"—that is substantially the starting point of that—"through prevention of the catch of small mackerel during those portions of the season."

We start to save the small mackerels' lives. A little later along, we realize if we save the small mackerels' lives by throwing them back, we do not have as many fish and the cost of production goes up, and the next thing we decide that for that reason we are not going to save the small mackerels' lives, and having started the thing with the effort to conserve natural resources and save life, and after we have established a kind of a validity, we throw him out of the back door.

Going beyond production control, you have asked me about price fixing or price provisions. I would say on price provisions that by and large what this country needs is more clean, real competition. We have got 3 million square miles of land and 120 million people. We have got more natural resources per unit of population than any civilized country in this world. We have got 10 million idle men, a couple of billion dollars of excess of reserves, and many tens of billions of dollars of work to be done. With that kind of a setting, I feel that the Government has wet-nursed too many industries by having with perfect sincerity in those early code days, essentially put up at auction, fair-trade practices against paying higher wages than we thought we could pay otherwise. I would submit that these fair-trade practices frequently fall short of clean fair competition, that they tend to become an effort to avoid embarrassing competition rather than real competition. I would feel that as far as price fixing, direct price fixing is concerned, I would be against that substantially from beginning to end.

Senator KING. Some of those so-called "fair-trade practices" which were set up were those which permitted open prices, resale price maintenance, uniform costs, floor costs, average costs, uniform contracts, uniform distance, customer classification, allocation of production, production control, and many other devices calculated to foster monopoly or permit monopoly.

Mr. HETTINGER. Senator, if you were to ask me to describe what each of those meant, you could line me up against the wall against a firing squad and I could not do it. That is to me one example of what

I have said, that in these codes, constructed with much perspiration and inspiration and patriotic effort, you have all manner of economics, good and bad.

Senator KING. Is it not a fact that those codes, some or all, have those provisions embodied within them?

Mr. HETTINGER. I think unquestionably so. That is, I recognize a great many. I cannot identify all of them, by any means. I can state that as far as price-fixing is concerned, I would oppose it.

Then you begin to come into such a thing as open-price filing. There you run into a situation where you have honest differences of opinion. I am inclined to believe that on net balance, you have the possibility of abuse, certainly in open-price filing with a waiting period, and I am inclined to believe in a great many other cases, that there is a possibility of abuse in certain of the codes. That abuse may not be there, but I feel certain of this, and I believe that most of my friends in N. R. A. would possibly bear me out, that if it were possible to clean the slate at this moment and start in anew, there were innumerable things in those codes that we would like to have out, that we believe are not in the public interest, that we believe are really not in the interest of either the industrial structure as a whole or the labor structure as a whole, but they have got in, and how to get them out is just an awful problem.

Senator KING. A major operation?

Mr. HETTINGER. It is, as I would see it, a very major operation.

Senator KING. Have you anything else you wish to suggest?

Mr. HETTINGER. I want to come now to what is to me possibly the most embarrassing single thing. It is important or not important, depending upon one's economic philosophy. If the important thing in these codes is the amount of legal sanction you are giving, then possibly what I have to say should not be given a great deal of weight. If, on the other hand, the important thing is to have a structure of sound, clean economics underneath, so that you have the facts and know the facts and can demonstrate the facts, then what I am saying is tremendously important.

I mentioned at the beginning of my testimony yesterday morning in the short length of time I was on the stand, the fact that in connection with the Darrow investigation of the small industries or small companies, what I think credible testimony indicated, and that was that N. R. A. had suppressed in their defense, the half of the evidence of conditions in the 16 industries analyzed that showed that the small company was hurt, and had used in those 16 industries such evidence as showed that the small company was helped. You have in the codes provisions that both help and hurt them.

That was a defensive measure. I do not know what I would have done under like circumstances. I might have done the same thing, but I do not believe it is in the public interest.

Secondly, I have here these two reports that I assume were probably prepared as much as anything else for this investigation. I simply want to submit that these reports do not represent the judgment of the Division of Research and Planning. I lived in that division; I know the man too well. They simply could not have been guilty of the kind of work in here. This is as contrary to Leon Henderson, it is as contrary to Mr. Hughes, who sits down there at the end of the table, it is as contrary to Mr. Kreps, and those men as anything in

the world, and I would ask you, Senator King, if you will—I want to run through this a little—if you will simply ask Mr. Henderson and several key men in his department, whether this report as submitted to you, represents their work.

Senator KING. Have it identified so that the record will show what it is.

Senator NYE. I should like to ask, Mr. Chairman, does the report purport to come from Mr. Henderson?

Mr. HETTINGER. I will read the thing——

Senator KING (interrupting). You can answer yes or no.

Mr. HETTINGER. "As prepared by Research and Planning, National Recovery Administration, Washington, D. C." is the title with "Condensed information based on the operation of the National Recovery Act." Now, I want to run through this very briefly.

In discussing this I want to make very clear my viewpoint. What I am trying to do as an individual is to support the Division of Research and Planning. I have tremendous admiration for those men and what they are trying to do. I want to avoid having them hamstrung, and having work come out that purports to come out from Research and Planning that I know has not been prepared by Research and Planning. I will state that categorically with respect to this.

This condensed information consists of 10 pages. The first page states the objectives of the National Recovery Administration and the conditions in industry impelling national action through these objectives. Essentially trite, and nothing with which one would take exception, nothing to write home about, essentially useless.

The second page gives the detail of what the President's reemployment agreement was.

Senator KING. Is it an accurate explanation or interpretation of it?

Mr. HETTINGER. That is not necessary at this point. I would say thoroughly adequate. And the National Recovery Administration as now constituted, and I believe subject to correction, that Leon Henderson, the Director of the Division of Research and Planning is economic adviser now instead of a member ex officio of the group, which means a diminution of the influence of what I feel should be the most necessary, possibly the strongest, single driving force.

Then, as to N. I. R. B. in an advisory capacity, we have an enumeration that runs to well on toward the bottom of page 3. Nothing so far other than a statement of the mechanics. Then toward the bottom of page 3, in section (c), "Codes of fair competition", simply an enumeration of the number of such codes and the number of times given provisions are found in them. Utterly meaningless, except that I would call your attention to one thing in a footnote at the bottom of this report, "and for the real profusion of detail"——

Senator KING (interrupting). Profusion or confusion?

Mr. HETTINGER. You have anticipated me, Senator. "For real profusion of detail", and in one of the other reports, "for the great degree of flexibility", or something of that kind—some carefully chosen words. If the truth were told it would be a confusion and chaos, which we know in Research and Planning should be pulled out as fast as can be. It would be a long operation, and an arduous one possibly, but there is here the implication that is substantially contrary to facts.

Page 5 continues that enumeration along the line, and about the only reference to the subject matter that has occupied the attention of this committee a great deal, that is price fixing and production controls, will be found in two lines, "Certain illustrative price and production control provisions are covered in table 45." No statement as to how many of them there are. Table 45 is an appendix somewhere. I believe there were 2 or 3 of them put together. But the point is that right above it you can learn that 615 prescribed age limits for the hazardous occupations, 398 makes provision for the workers' safety, and so forth, and right below that line you can find out that misrepresentation by advertising or otherwise is prohibited in 590. Secret rebates in 553.

But I defy you looking at this to guess from that line anything about the context "certain illustrative price and production control provisions are covered in table 45." How many of them we do not know. If you get your books out, your appendices, you can find them——

Senator KING (interrupting). May I interrupt you there?

Mr. HETTINGER. Yes.

Senator KING. Have you examined, "Prices and price revisions in codes", prepared for the hearings on price provisions of codes of fair competition, January 29, 1935? Have you examined that, and if you have will you turn to part 3 and examine there the data of the number of codes and the provisions in a large number of them? Then I was wondering if you had examined it, whether the data here corresponds with the data, big or little, important or otherwise, that is in the document you are reading from now?

Mr. HETTINGER. Senator, I want to answer that frankly. I am answering this on the basis of opinion and a certain amount of inspection. I have not had the time to go through in detail, but some very fine work is found in the volumes, clean and——

Senator KING (interrupting). I am not asking you that I asked you if you examined this report which I hold in my hand.

Mr. HETTINGER. I have examined it, but I have not audited it in detail.

Senator KING. Have you examined part 3 to ascertain whether or not the data found in part 3 harmonizes with the statements contained in the report from which you were just reading? It is not important, only I wanted to find out whether the documents——

Mr. HETTINGER. I would say no. What I wanted to do, Senator, is to draw a distinction to several fine pieces of work that were prepared by Research and Planning without censorship and coercion, and two pieces of work that I am morally certain that if you put the 3 or 4 or 5 key men on the stand here and ask them whether they prepared them and whether it represents their work without censorship or coercion, if they will tell you that it does, I am as wrong as I have ever been on anything.

Senator KING. Proceed.

Mr. HETTINGER. The Research and Planning is all right if you will give it a chance, and it is superb in the face of great difficulties.

To proceed there, on page 6 you have a statistical enumeration of how many interpretations or stays or exemptions there have been. Page 7 deals with certain Executive orders, just enumerating them,

and that contains substantially what is stated by National Recovery Administration.

I want to call your attention very definitely to this. These are things that I feel that a condensed information based upon the operation of the Recovery Act should at least have suggested to you. These things I am mentioning you will not find in here, or if you find them it will be by a microsope or something of that kind.

You have devoted a good bit of time to price fixing. You will not find that mentioned as one of the problems. You have devoted time to production control. You will not find that stated as one of the problems that the committee should consider.

The freezing of distribution differentials is a very troublesome thing. You will find not one word or one sentence on that. I doubt if you will find anything on emergencies. I have not scanned this carefully, there may be 7 or 8 emergencies, but I would just like to raise that point of view for the record.

I doubt if you will find how many provisions there are limiting new construction in industry and whether that is a problem that concerns N. R. A. I doubt if you will find much that raises the question as to the soundness of limiting new machinery.

I question whether there will be very much of a treatment of the North and South differentials and other differentials, and there I would like, if I might, simply to call attention to the fact that in Geographic and Population Differentials, in Minimum Wages, prepared for the hearings on the employment provisions of the codes of fair competition, put out by Research and Planning, under the signature of Mr. Henderson, there is superb statement of the problems involved, the difficulties of solution and the problems involved.

I would ask you to consider not only whether North and South differentials have been included, but whether there is any indication of the difficulties of population differentials. There are tremendous overlapping difficulties in connection with that in truckage and deliverage costs which are not tied in with that, but troublesome, knotty, things that are involved.

There is no suggestion in this report, so far as I know it, that there has been a problem of small companies or small industries, overlapping codes, plants operating under several codes; when the same plant is operating under several codes and at times the same department at one time making goods that will be partly within one code, another time making things that will be under another code.

Or the problems of enforcement; or the problems that have arisen in connection with code authorities. There is substantially nothing concerning the operation of the act. You have substantially nothing but an enumeration of the provisions of the codes, and not very clearly done, and what if this were a Bible I would term a Biblical concordance of code provisions.

I am not going to dignify pages 8, 9, and 10 with any detailed analysis.

Coming over to his "The course of industrial recovery", no honorable economist or statistician would hold that that presents a clear, comprehensive, unbiased statement of the picture. I am perfectly ready to rest my judgment on that on the statements of Mr. Henderson that he can make to you—who are Mr. Henderson's two key assistants, may I ask you?

A VOICE. Mr. Lansburgh and Mr. Hughes.

Mr. HETTINGER. I would be perfectly willing to say that if you were to ask Mr. Henderson, Mr. Lansburgh, Mr. Hughes, or Mr. Kreps, I will stand on the statement of four superb, honest men, as to whether that is a fair picture.

Senator HASTINGS. Where did you get that pamphlet?

Mr. HETTINGER. The N. R. A. I got all of these things at one time or another there.

Senator HASTINGS. When was that printed or published?

Mr. HETTINGER. February 1935.

Senator KING. After our hearings started?

Mr. HETTINGER. I have no knowledge of that. As a matter of fact, I have avoided, practically speaking, going over to N. R. A. because I have not wanted to embarrass anyone. I think I have been in Research and Planning once. I have such admiration for those fellows over there, and I am known as a critic, I hope an honest one, and I do not want to embarrass any of them, so I have had these impersonally sent over, and I cannot state the times of each one of them.

Senator KING. Proceed. Is that all?

Mr. HETTINGER. I have one other document, and when that is done so far as I am concerned, I am through. There would be a great deal more in detail that could be given——

Senator KING (interrupting). Do you want to analyze that?

Mr. HETTINGER. I want to analyze in part this report on the operation of the National Industrial Recovery Act, Research and Planning Division, National Recovery Administration, Washington, D. C., February 1935. This will be a hasty and an imperfect analysis.

Senator KING. Proceed.

Mr. HETTINGER. I will turn to page 7—and I will say here that I am not criticizing the Reserch and Planning in itself. I know that organization too well. I am criticizing what has been done to it under pressure.

Page 7:

> Until recently, the major portion of the efforts of the Recovery Administration was devoted to the formulation and negotiation of codes of fair competition.

I will simply turn to page 45 for the record, and page 45 will show that at the end of June 1934, 21,456,000 in round numbers, people had been brought under the codes. These are figured on the 1929 employment basis. And at the end of January 1935, 22,076,000.

Actually, of the people brought within codes at the end of January 1935, the contribution of July was seven-tenths of 1 percent; August, three-tenths; September, four-tenths; October, three-tenths; November, materially less than one-tenth; December, one-tenth; and January, 1 percent.

Senator HASTINGS. What are these?

Mr. HETTINGER. These are the number of employees supposedly brought within the codes in the particular months through having created new codes.

On page 49 there is the statement that as of August 8, 517 codes had been adopted, and as of February 1, 546 codes were adopted. You had 29 codes, mainly small and inconsequential, adopted between August 8 and February 1.

The truth of the matter is that N. R. A. simply tangled up in a kind of a Frankenstein grip, was trying to patch and work through as well as it could, and that is a dishonest statement that "until recently the major portion of the efforts of the Rocovery Administration was devoted to the formulation of codes." That might have held, we will say, up to last August, but not yet——

Senator King (interrupting). May I interrupt? Prices and Price Provisions in Codes prepared by the National Recovery Administration, states that 677 codes had been adopted or rather, at the top of the column here, the words "number of codes", is given and the total is 677.

Mr. HETTINGER. I imagine you may have subcodes, or things of that kind. I am simply taking the facts as I find them in here.

The second thing, a little lower than that, is the statement that N. R. A. pay rolls are averaging about $800,000 a month. If you turn to page 45 where that information is given, every month since either March or April has been above that figure, with a lift in the trend, and for the 7 months ending January, if my arithmetic is right, it is $936,000, or 16 percent in excess of the statement. And this purports to be the statement of the Division of Research and Planning. And in March, with the statement for the first 28 days, I believe a new high record is established.

I want to refer to simply three cases of phraseology and ask you to consider their clearness [reading]:

The provisions in the codes of fair competition are so diverse that the requirements of space make it impossible to analyze.

Then the footnote:

And for real profusion of detail, the so and so at the bottom of that page.

And on page 9, after having enumerated a great many of the things:

Even this does not adequately portray the extent of the diversity.

There is a selection of language to imply flexibility, careful craftsmanship, and so forth, rather than the actual recognition of confusion and a degree of chaos which you should get out and which that division knows should be got out, and will work to get out.

On page 9:

Practically all codes specified with certain statistical and other information shall be reported to National Recovery Administration by other Government agencies.

Your code provisions provide for a reporting system. With all of these several hundred codes, I think one probably might assume that that reporting system was well under way. I believe that we should know that it is very fragmentary, very sketchy, and I would rely upon Mr. Henderson's appraisal as to the number of codes in which he feels that you have a good reporting system.

I jotted down what I think might be a few of the fundamentals. I would like to ask in how many of these codes you have simply employment, man-hours, production, sales, and stocks. We will say five fundamentals. Ask how many of them there are.

Senator KING. If I understand your observations now are directed against the incomplete and imperfect method employed in reporting codes, and material matters relating to the N. R. A. and its activities?

Mr. HETTINGER. Yes; on pages 12 and 13 there are charts that as they stand no living man can interpret. Two things are plotted. One thing appears in the title. I searched the text over and over again. They are so-called "stairs charts", and what the two variables plotted are, whether it is hourly rates for male and female, or north and south, or small city and large city, I do not know. I think that probably what happened was that the charts were put in right, and by the time the text had been edited and reedited around, someone just simply did not notice that the text did not tie in with the charts.

Senator KING. That may have been put in to induce you to ask more questions.

Mr. HETTINGER. That may be. Toward the bottom of page 9 is the statement, "Certain illustrative price control and production control provisions are covered in exhibit 5, pages 52 to 55." And I want to go into no detail on these, but I simply want it in the record for the benefit of the committee that I think that those things call for thorough analysis. They indicate the particular industries where a man violates a law, if he establishes a new factory, or puts in new machinery, without having gotten the permissions of the various parties concerned, and innumerable things of that kind.

Senator KING. However, those observations you are making would be unimportant if the committee should conclude to not enact any legislation on this matter?

Mr. HETTINGER. Thoroughly correct. On page 14, measuring the quantitative work, I would simply call your attention to the fact that 139 general administrative orders, and 11,346 individual code administrative orders had been issued; 680 code amendments, 614 general stays; 1,171 exemptions to individual code members.

The point I want to emphasize there is that inevitably to a substantial extent you have a government by man rather than by law here, a tremendous discretion centralized in one branch of the Government, which in many respects is superb in the personnel but I feel has responsibility that transcends the ability of any group of men to handle, and I feel that a substantial proportion of the number of those things is merely an inferential recognition of the fact that far too many codes created under emergency crisis provisions are still not sound codes.

Yet; how in the world to get those provisions out of those codes, that should come out, I do not know, Senator. One can keep plugging, but I want to emphasize how hard that is.

Senator KING. Have you the number of interpretations which have been placed upon the codes and upon the amendments to the codes, or upon orders which have been promulgated by the code authorities?

Mr. HETTINGER. I do not recall; there are so many facts and figures. I do know that in the Blue Eagle issued week by week you will run across interpretations, and I would suggest that it might be interesting for some of the men in the committee just to get a file of those Blue Eagles that have been put out week by week for two-thirds of a year, and run their eye over them to get the kind of a picture that that will provide.

Senator KING. Has your examination of the Blue Eagle been sufficiently comprehensive to state that there have been interpretations of interpretations?

Mr. HETTINGER. I can say there have been interpretations—and my head is dizzy enough there. Whether there have been interpretations on interpretations, I could not state with any honesty.

Senator KING. If an interpretation is placed upon a provision of the code or upon an amendment of the code, and that interpretation is violated, that would bring the offender under the condemnation of the original provision of the code?

Mr. HETTINGER. I would suppose so.

Senator KING. Or under the condemnation of the interpretation?

Mr. HETTINGER. I am wobbling now, Senator, but I know that there are so many edicts going out that I have heard men operating under the codes, especially where they are operating a number of codes in one factory, simply confess their inability to feel certain that they even knew of the things that they were supposed to live up to.

Senator KING. Would there be different codes applicable to one factory where it was an integrated industry?

Mr. HETTINGER. That would be a matter of definition, but I have no doubt but what you will find many a factory, that you would think of as being in a given industry, in the rough. You would ask what industry that is in, and find that it is in more than one.

With the many hundreds of codes, and having codes for segments of segments of industries, I have no doubt but what you would find a single factory operating under several of them, and I believe there are cases where a single department will be turning out things that at one time will be thought of as belonging in one industry and at another time in another industry.

Senator NYE. Who has exercised the last final word as respects the granting of exemptions?

Mr. HETTINGER. When I was with the N. R. A., that was the Administrator. Whether it is the Administrator or the N. I. R. B. now, frankly, I do not know.

Senator NYE. Do not the code authorities exercise some voice in that?

Mr. HETTINGER. Practically the Administrator is like the President of the United States, in a different field. He has got to go on the basis of what his advisers recommend. His adviser will be the Deputy Administrator in charge of the code, we will say, and possibly certain of the boards within the N. R. A. They cannot tell except insofar as they are conversant with the industry, and if you or anyone else were in their place, we would have to give substantial weight to the opinion of the industry.

If we believed the industry was clean and honest, we would give it more weight than if we were doubtful, but there would be no doubt about the fact that the code authorities are bound to have a substantial amount of power to recommend, and it is my impression, upon the basis of these detailed provisions, on pages 52 to, say, 58 or thereabouts, that you may find an occasional case, a heritage of the old days, where they can do certain of the things without even the nominal approval of the Administrator. Nothing of that kind would get in now. Whether it is all taken out or not, I do not know.

On charts 8 and 9, I do not know exactly how to interpret them, but on the real facts, the business of a chart to stand on its own feet and tell the truth, I would point to the fact that the number of complaints received periodically exceeded the number of complaints closed, and yet in spite of that, the number of complaints on hand declined. That is an anomaly unless it is explained. I have not found the explanation of it. Frankly, I have notations throughout

this report. I think it would simply be amassing a certain amount of evidence that would not be worth your time, but if I could summarize in 2 or 3 moments the plea that I have, it is if you extend the N. R. A. along anything like its present lines, I hope that you should give a potentially valuable department of Research and Planning at least sufficient autonomy so that you can depend upon the fact that the information which they turn over to a committee such as this or to the public, represents clean information and I will submit that these two volumes do not represent the Division of Research and Planning, that this first volume of major size has been edited sufficiently to wreck its quality, and I will never believe until I hear the leading men in the department state that they have turned out that piece of work, that they are responsible for the smaller report, "Condensed Information Based on the Operation of the National Industrial Recovery Act."

Senator NYE. Is the committee to understand that in your opinion there has been a lack of intellectual honesty and integrity within the administration of N. R. A.?

Mr. HETTINGER. Senator, you have got to define your terms. If you think of N. R. A. as something you thoroughly believe in, you are inside of it, and the thing is under attack, you know it has made certain mistakes, you are anxious to have the good go on, you believe that a great good is going to come from it, and it is a very human thing then to try to put the best side forward, and I do not want to be that bitter in my criticism of any individual for having done that, but I feel that the cost of it is tremendous, if this is going to be a continuing organization, because I believe so thoroughly that N. R. A. will stand or fall on the soundness of the economic work done, that I do not believe that you can afford to have what I would think of as important a division of N. R. A. as exists, put in a position where it cannot speak as it would desire to speak. It cannot tell the truth as it sees the truth. It has got to wonder whether what it is producing will pass a censorship and has to have it censored.

There is as much difference as between day and night between those pieces of work put out for the hearings at various times during the year, and these pieces of work put out substantially as the report to this committee and the Nation, as may be. Does that answer your question?

Senator NYE. I believe, generally speaking, it does.

Senator KING. You had better identify the second product.

Mr. HETTINGER. The reports, that I believe, on the basis of imperfect analysis, represent clean, honest work of the Division of Research and Planning, were labeled, first, "Prices and Price Provisions in Codes", prepared for the hearing on price provisions of codes of fair competition, January 9, 1934, National Recovery Administration.

Second, "Tabulations of the Labor Provisions in Codes Approved by August 8, 1934", prepared for hearings on the employment provisions of codes of fair competition of the National Recovery Administration, January 1935.

Third, "Hours, Wages, and Employment Under the Codes", prepared for the hearings on the employment provisions of the codes of fair competition, Research and Planning Division, January 1935.

Fourth, "Geographic and Population Differentials and Minimum Wages", prepared for the hearing on employment provisions of the

codes of fair competition, National Recovery Administration, undated on the outside.

As a second entire group I would refer first to the report on the "Operation of the National Industrial Recovery Administration, Research and Planning Division, February 1935", which I will be convinced, until Research and Planning states to the contrary, represented such severe editing that they would not say that this was their work without modification or deletion, and finally the "Condensed Information Based on the Operation of the National Industrial Recovery Act", as prepared by the Research and Planning Division, February 1935, which I do not believe was prepared by them.

Senator NYE. When did you come into the N. R. A. Division?

Mr. HETTINGER. I would say approximately the 18th of August 1933. That is not necessarily a rigidly exact statement.

Senator NYE. Rather early in the life of the organization, was it not?

Mr. HETTINGER. About 60 days after it started.

Senator NYE. Were you then a believer in the purposes—what was understood to be the purposes?

Mr. HETTINGER. I would say that in the beginning I was a puzzled man. I was asked to come to work on the economics of it, and the work came so hot and fast that in the early stages I had no clear-cut convictions as to whether I would believe in it or not. I was groping.

Senator NYE. Who asked you to come down?

Mr. HETTINGER. Alexander Sachs, who headed the Division of Research and Planning. As time went on I felt that there were an increasing number of unsound things creeping in, and I gradually lost my confidence in the thing. I have felt, and I have so written, that the N. R. A. could be salvaged, and if you will turn to the exhibit in the New York Herald Tribune of September 9, I stated that I believe it could be salvaged; but it would be a tremendous job—a tremendously difficult job—in salvaging it, and I have taken the same ground since. It is difficult enough so that I think the odds are against salvaging it, unless one recognizes honestly the difficulties in it and carries through.

Now, having finished with myself, I want to say a little bit about my committee.

Senator KING. Is that necessary?

Mr. HETTINGER. That is at the pleasure of this committee.

Senator KING. You mean the committee with which you are working now?

Mr. HETTINGER. I have been stating my own opinions. The committee is made up of 15 men, representing indirectly a large number of heavy industries, with diversity of viewpoint. Some of them will feel closely allied to my position, and some of them will differ very materially. The committee, as a whole, has subscribed to the recommendations of the Congress of American Industry and National Association of Manufacturers and the declarations of the Joint Business Conference for Economic Recovery, held in December 1934.

Senator COUZENS. Will any member of your committee come down here and speak for the committee as a whole?

Mr. HETTINGER. I think not. I have emphasized, Senator Couzens that the things that I have been saying are my own viewpoint as an individual, and that the committee's opinion is a matter of record, in that it has taken the position taken by the National Manufacturers Association at the conference on business in New York the first week or 10 days of December.

Senator KING. And I suppose that the proceedings of that conference have been published?

Mr. HETTINGER. Yes.

Senator KING. Is that all?

Mr. HETTINGER. Yes.

Senator KING. I would like to ask Mr. Smith if he will furnish to the committee the report on Executive Order No. 6767. I understand there has been some confusion in your organization about it.

Mr. BLACKWELL SMITH. Mr. Richberg has written you a letter, which I assume you have received; and the matter, so far as I am concerned, is in his hands. I will renew your request to him.

Senator HASTINGS. I have made the request yesterday, and the chairman was certain that we would have the report; but that request has been made three or four times, and we have not received the report yet.

Senator KING. I will renew my request, in view of that fact. And I should like also, Mr. Smith, a report on price filing in the paper-manufacturing industry.

Mr. SMITH. What report do you refer to? Is that a recent report?

Senator KING. Yes. And in asking for the report on Executive Order No. 6767, if the report was modified or changed or emasculated in any way, I want the original report and the various modifications and emasculations, if there were any.

The CHAIRMAN. The committee will recess now until 10 o'clock tomorrow morning, and Mr. Janney will be called as the first witness.

(Whereupon, at 4:05 p. m., an adjournment was taken until 10 a. m., Wednesday, Apr. 3, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

WEDNESDAY, APRIL 3, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, at 10:05 a. m. in the Finance Committee room, Senate Office Building, Senator Pat Harrison (chairman), presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Gore, Black, Gerry, Couzens, Metcalf, and Capper.

STATEMENT OF LAURENCE A. JANNEY, NEW YORK CITY

(The witness was first duly sworn by the chairman and testified as follows:)

Mr. JANNEY. My name is Laurence A. Janney, 60 East Forty-second Street, New York City.

The CHAIRMAN. Whom do you represent, Mr. Janney?

Mr. JANNEY. I am appearing, Mr. Chairman, as a private citizen. I represent no one, I serve no interest except my desire to help, if I can, to extricate the Government and the people from the dilemma under N. I. R. A.

The CHAIRMAN. We will be very glad to hear you.

Mr. JANNEY. My excuse for appearing here is that for about 30 years I have been practicing law, specializing in the field of the regulation of competitive relationships in business. I have been counsel in many suits in Federal equity causes. In numerous instances I participated in the negotiation of agreements under which business units have attempted to discipline themselves.

From my experience I have acquired some familiarity with the problems involved in the regulation of business conduct, and particularly with the procedural instruments and methods that are available for the purpose.

I am not here to cry over spilt milk. I have no grievances. I have no prejudices, no biases for the administration or against the administration, or for business or for employers or employees.

I do not know whether the results strictly attributable to N. I. R. A. up to the present time have been beneficial or otherwise. At any rate, I am not qualified to counsel this committee on that subject at all.

I do not pretend to be an economist, and therefore there will be numerous details of economic policy upon which I shall not presume to make any suggestion.

On the other hand, following my deeply interested observation of the operation of N. I. R. A. and its failure to operate, I undertake to

point out some particulars pertinent to my own range of experience which I think should be brought to the attention of this committee.

As a matter of fact, I feel that the Congress may well desire first to determine how to solve the legal problems with which it is faced before deciding how far it will go in sanctioning new economic policies. In the end, I shall invite the committee to consider a definite program, the principles of which I have at hand in a draft act which I will distribute presently.

I applaud most sincerely the fundamental economic and social purposes which N. I. R. A. has sought to serve. I deplore the governmental and procedural policies under which the attempt has been made to pursue those purposes.

An illustration of the extraordinary development of the code theory, for instance, appears in the collapse of the so-called "Belcher case." There we find a situation which is slightly less than preposterous, in which the Senate of the United States felt called upon to consider the adoption of resolutions by which to persuade the executive branch of the Government to permit the judicial branch of the Government to perform its normal functions. The executives, however, preferred that the Supreme Court not review the Belcher case.

As will appear upon analysis, the executive branch of the Government has undertaken appalling responsibilities. It has acted upon the supposition, first, that it may promulgate code law which shall be binding upon everyone as if those code laws had been explicity approved by Congress.

Second, that the executives may unmake or amend code law at will again so that the result shall be binding upon everyone.

Third, that the executives having made supposedly binding code law, may then dispense such exemptions and make such exceptions as may seem to the executives expedient; and, fourth, that the executives may do all of these things in their own unlimited discretion, while Congress may or may not know what is declared in the codes to be binding law, and while the Federal Courts are intended, apparently, to wait until they are called upon to enforce such code law as the executives may choose to present for judicial scrutiny, subject, however, to such changes of policy as the executives may adopt from time to time, so as to permit or preclude authoritative statement of the law by the Supreme Court.

And all this while, the people, employers and employees alike, have no means of knowing what is the law under N. I. R. A., what they must do to comply with the law, how they must deal with the irreconcilable interpretations of their duties which are emanating from time to time from the executives, and, on the other hand, from the judiciary.

It is a basic characteristic of our system of government that the legislative, the executive, and the judicial branches should be inseparable allies striving by a joint effort to promote the general welfare. There is no occasion in which this marshalling of allied forces is of greater importance than in attempts to regulate the conduct of individuals and organizations in relationships of business.

Under N. R. A., however, instead of finding cooperative and coordinated action of the respective branches of the Government, we must witness the sorry spectacle that the executives and the judiciary are

functioning in direct opposition to each other. The one has attempted to build up a structure or code law and the other has been obliged to tear it down.

The legal deficiencies of code law as interpreted by the subordinate Federal courts have become so notorious that even their news value is minimized. Court after court has declared codes and the bases of codes considered as binding law to be unconstitutional.

Nevertheless, the executives urge the enforcement of codes. One executive department wishes, perhaps for excellent reasons, to postpone any determination by the Supreme Court of the validity of the statute, while the subordinate Federal courts continue to declare its invalidity.

Another department urges, nevertheless, persistent pressure against code violations.

In this strange predicament, I advocate a return to the normal balance and coordination of the three branches of the Government, so that they should become again allies instead of antagonists. And I suggest that the resources of Federal power be investigated to ascertain which of them may be available for regulatory purposes to the end that the sound economic and social purposes of N. I. R. A. may be achieved by orderly and efficient methods and with minimum uncertainty and confusion.

When the National Industrial Recovery Act was first presented to the people of this Nation, the letters "NRA" stood as the symbol of an aspiration to elevate standards of conduct in business relationships.

The national emergency had precipitated an urgent demand that business men fight the depression by correcting their errors of self-centered thinking and action, and by uniting in a massed cooperative effort sustained by a common purpose to perform their just obligations to each other and to society.

In the statute enacted for the purpose, Congress gave expression to that demand upon business, and proposed measures by which the cooperation of business units might be guided and effectuated.

The calamity of the depression suddenly inspired an uncommon concentration of thought upon questions of business conduct, and upon the economic and social effects of a variety of dubious business practices. There was a rapid cumulation of righteous opposition to unsound practices which had been largely ignored until the Nation began to seek out every expedient that might aid an escape from its dilemma.

The entire country was aroused. The need was almost unanimously recognized, that business conduct must be regulated for the good of everyone concerned and that business men must be authorized to cooperate to that end. The public, in all walks of business life, entered heartily into the spirit of the N. R. A. movement.

Today, disappointment, skepticism, pessimism, are widespread. The public is confused, perplexed. Confidence in the N. R. A. idea has been seriously undermined. Faith in the potentialities of the program has largely abated. A multitude of employers and workmen feel bitterly disillusioned.

These things are hardly surprising. The forces of the Government seem to have been working at cross-purposes. The decision by the Supreme Court, in the "hot oil" cases suggests, to say the least, that

the legal advisors of the Administration have not been infallible. Numerous subordinate courts have flatly rejected some of the major theories upon which N. R. A. was founded. No one can foretell exactly what will be the last word when it is spoken by the Supreme Court. So far as I can judge from the newspaper reports, the executive branch of the Government is uncertain what to do next.

This situation issues a stirring challenge to the resourcefulness of this session of Congress.

A multitude of conscientious citizens, employers and employees, have committed themselves to the basic policies of N. R. A., and have substantially readjusted their affairs in a sincere effort to follow the guidance of the Administration. Those citizens want to know whether now they are to be let down; whether they must now retrace their steps and adapt themselves once more to the harassments of unrestrained cut throat competition, with its deplorable corollaries of unfairness to producer, workman, distributor, and consumer.

Many other citizens have willfully defied the attempt to regulate their conduct. They should be told whether or not, after all the warnings and threats which have been uttered against them, they may still do as they please, regardless of resulting grave detriment to our whole economic structure.

Congress may now choose between four courses:

First. The entire N. R. A. program may be thrown into the discard.

Second. The program may be continued in its present form, for another experimental period.

Third. The Government, having already insistently urged upon the people the policies of N. R. A., may now beat an ignominious retreat; may confess that it went much too far, and must now withdraw to a position that can be more easily consolidated; may admit that it cannot cope with the problems it set out to solve; may decide to attempt regulation in only the interstate area of business, where the difficulties appear minimized, while leaving the vast volume of intrastate activities and relationships wholly unregulated so far as Federal control is concerned.

Fourth. Or, finally, Congress may devise new governmental and procedural policies, by which sound economic and social purposes may be achieved, by lawful and orderly methods, and under which the impact of regulatory forces may be directed, with uniformity and certainty of effect, against all business that requires to be regulated for the good of our national life.

In my view, it is unthinkable that Congress would sanction any of of the first three courses which I have indicated.

I cannot conceive that Congress would say that the entire program should be abandoned as worthless, because that is utterly untrue. Most of the economic and social objectives are meritorious beyond calculation. All business, employers, employees, the consuming public, would be immeasurably benefited if they were safeguarded against the conditions and results of unbridled license in competitive rivalry, with all its evil incidents of exploited labor, deception, misrepresentation, the surreptitious degrading of merchandise quality to reduce costs, so as to reduce prices, so as to offer or meet cut-price competition based also upon degraded quality, or based upon low wages and long hours, so as to carry on the sordid fight in the vicious circle.

I cannot believe that Congress would continue the N. R. A. program, in its present form, for any period beyond its present life, which happily I think, is drawing presently to a close.

As it stands, the structure of N. R. A. is a top-heavy edifice resting upon shifting sands. The tide of judicial opinion already threatens to sweep away the sands. The edifice is badly tilted. It is quite possible, if not probable, that the Supreme Court will administer the final push which will topple it over completely.

No one knows today, with any certainty, what the law is under N. I. R. A. No one knows how he should adjust his business affairs so as to reconcile them with the cross currents of conflicting interpretation which are flowing from the executive and judicial branches of the Government.

It has been suggested that the courts should be better informed upon the facts of interstate commerce, and their current significance, so that the judiciary might be more sympathetic with the effort of the executives to regulate intrastate commerce under interstate powers. Perhaps it is a fair rejoinder to say that the executives who would instruct the courts upon the facts of interstate commerce, would do well themselves to examine the law affecting interstate commerce, so that they might be more understanding of the necessities, imposed upon the subordinate courts by the decisions of the Supreme Court, to draw a distinct line between interstate and intrastate commerce.

In the attempt to apply regulation to every aspect of business, and to accomplish a colossal task too speedily, the Administration, with the best possible intentions, has so distorted the relationship of the executive branch to the other branches of the Government, that, if the current program be perpetuated in its procedural characteristics, our traditional system of Government will be no longer recognizable.

The often declared theory has been that codes, once approved by executive agencies, are binding law, binding upon the majorities of business groups who propose the codes; binding upon the minorities of the groups regardless of their dissent; binding upon the courts, provided, of course, the plan is constitutional, and the code provisions can be somehow justified under the language of the statute.

In drafting and promulgating a code, the executive agencies must adjudicate issues between favoring majorities and dissenting minorities; and in doing so, the executive agencies must perform judicial functions, must receive and weigh evidence, and determine its effect.

Having thus acted as a judicial tribunal, and arrived at its conclusions, the executive agency must then promulgate the code regulations, thereby performing a legislative function, and establishing substantive law which might or might not meet with congressional approval if the detailed code provisions could be subjected to scrutiny by Congress.

Thereafter, the executive agencies are supposed to prosecute enforcement of the law as to which they have previously adjudicated and legislated; and that law is assumed to be binding upon the Federal Courts, as though it had been enacted by Congress.

If this code-making procedure is constitutional, and if the executive-made codes are enforceable, it means simply this: that anyone violating a code provision may be dragged into a criminal court, and upon the mere showing of the fact of violation, he must be found guilty.

The particular code provision which he has violated may be one which Congress would never have approved specifically, although it may appear to be fairly within the scope of the generalized authorities expressed in the statute. The court may consider the specific provision to be iniquitous. It may be in truth iniquitous. Perhaps the provision was instigated by the partisan majority of the business group, and the executive agency may have approved it without appreciating all its dangerous implications.

None of these conditions, however, can affect the case, the court is powerless to relieve the violator although his conduct may have been unimpeachable from every sound economic and social viewpoint, again assuming that the code-making process has a constitutional warrant.

In spite of this proclaimed rigidity of code law, and its binding effect upon the courts, we find that the executive agencies exercise the widest discretion, not only in the examination and approval of codes in the first instance, and in the origination or acceptance of code revisions, but also in the granting of exemptions from the operation of code provisions which, apparently, are intended to be inflexibly controlling upon everyone except the executive agencies. For illustration, according to the newspapers, the following was reported to the Senate Finance Committee. [Reading:]

> Necessarily the effort to establish industrial codes would produce many cases of individual injury. But provision has been made from the beginning for the consideration of such cases; and over 1,171 exemptions from the operation of specified code provisions have been granted. Furthermore, 680 code amendments have been approved, modifying more than 2,000 separate code provisions; 614 general stays or temporary exemptions from code provisions have been put in effect to permit further study. Thus, every effort has been made to meet complaints and to rectify mistakes of judgment.

That is quoted from a report of the proceedings before this committee, part 1, page 12.

I think we should offer thanks to high Heaven that these exemptions and exceptions have been administered by decent and incorruptible men. The opportunities for scandalous traffic in dispensations are astounding.

One can be thoroughly sympathetic with the evident difficulty of the problems confronting the executive agencies. One can be fully appreciative of the industry and good faith with which these problems have been attacked.

Nevertheless, one must be shocked at the very idea that executive agencies would undertake to make, amend, and unmake laws of such grave economic and social import, and would dispense exemptions and immunities under those laws, apparently with limitless discretion, while the courts are expected to remain supinely at hand until they are called upon to exact the penalties and enforce the remedies under such executive-made laws as the executive agencies may choose to litigate.

Fortunately, the courts, in many cases, have refused to acquiesce in the theories and procedure just outlined. To that extent the courts have upheld our governmental system against the effort to extend executive power and dominance into fields upon which the executives have no right to enter, except under the most explicit authorization from Congress.

We find numerous instances in which our citizens have sought refuge in the courts, and happily have found relief against the attempted enforcement of code law which has been made simply by the joint action of executive agencies and business majorities. We should be deeply grateful that the Federal courts are still accessible to men of all walks of life, without discrimination. And we are spared the spectacle of the ruthless enforcement of fictitious laws which neither Congress nor the judiciary has sanctioned.

No one should close his eyes to the obvious validity of the criticism that, under N. R. A. as it has been administered, the attempt has been made to regiment business under executive dominance. The good faith, patriotism, and altruism which have motivated that attempt should be recognized and applauded; but they are quite beside the point.

We must revive the concept that we have a government of laws, and not a government by men. If the Constitution is inadequate or defective, the people can amend it. Until that is done, we must abide by the law as it stands. And, in my opinion, Congress cannot perpetuate the current N. R. A. program consistently with that law.

As to the third course which I pointed out, I cannot believe that Congress will approve the suggestion that the N. R. A. program should be half-heartedly revised, so that the proposed regulation of business would be confined to interstate commerce, while all intrastate activities and relationships would be left free from regulation by any Federal power.

It has been proposed to this committee that Congress may prescribe regulations for interstate commerce and may encourage the making of voluntary agreements among those engaged in intrastate commerce, while leaving to action by State legislatures the making of rules to govern business in their respective areas.

In my view, to advocate such a plan is to ignore the prerequisites of any sound regulatory program.

Regulation, if it is to be useful rather than harmful, must be uniform. It must not circumscribe the competitive expedients of one class or area of business, while leaving rival businesses at liberty to resort to all of the instruments of unfair trade.

There can be no justification for a plan which would compel the maintenance of high standards of conduct by a manufacturer who distributes his product throughout the country, while he is obliged to face the unregulated competition of businesses confined to individual States, or of businesses which may reorganize by setting up separate corporations, each of which limits its business to the intrastate field and thereby escapes regulation.

We cannot know definitely where the Supreme Court will draw the line between interstate and intrastate commerce, in view of the arguments which now may be made. The decisions of the lower courts in the *Weirton* and *Kentucky coal cases*, and in some of the lumber cases, indicate a trend of judicial reasoning which may or may not be precisely approved by the Supreme Court.

In any event, it must be certain that a sharp line will be drawn ultimately, and that on the intrastate side of the line there will remain a great number of operations and relationships which should be subject to regulation, in the interests of economic cooperation and fair trade, but which cannot be directly regulated by Congress under

its interstate commerce powers. There must still be many intrastate activities which will threaten damaging consequences unless regulated, and may tend to undermine the whole effort of businesses to cooperate and maintain fair standards.

If regulation be limited to interstate commerce, those engaged therein may well find themselves forced to pay decent wages, to curtail hours of work, and to submit to a variety of rules, while those who can isolate themselves in intrastate commerce would remain at liberty to compete by all sorts of unfair and cutthroat tactics. It is not hard to imagine conditions of conflict in which operations in interstate commerce would be decidedly handicapped, and the attempt at regulation would prove worse than useless.

It may be argued that the advantages in favor of intrastate commerce could be offset by legislation in the individual States. The obvious answer is that it would be unwise to rely upon 48 State legislatures to exercise uniform regulations which would be adequately protective of interstate operations.

It is quite possible that some States would bid for the establishment of new industries within their borders, by relaxing regulatory measures, or declining to adopt any at all, so that businesses would be induced to organize separate entities in those States, to confine their activities therein, and thereby elude regulation. Just as some States have enacted liberal corporation laws and liberal divorce laws to attract outsiders, just so some States might offer themselves as sanctuaries to those desiring to withdraw from interstate commerce.

The suggestion seems to me quite futile that we rely upon voluntary agreements between those engaged in intrastate activities, under which they would regulate themselves correspondingly to the regulations to be imposed upon interstate commerce. The very individuals who most require to be regulated in the interests of fair play would be the ones who would decline to enter into any such agreements.

The operators of sweatshops, the slave drivers, the cheaters, who can hide within the protecting folds of intrastate commerce, could ask no more of life than to be left free from restraint, while their respectable competitors are bound by agreements or by laws, applicable to them alone, which would forbid the low strategies of the business underworld.

If regulation be limited to interstate commerce, we can be quite sure that the persistent recalcitrants, and their ingenious lawyers, will be well able to find ways to confine, within State areas, major industrial operations, particularly those involving masses of productive labor, and to keep those operations lawfully, if not ethically, insulated from interstate commerce. A resort to separately organized sales corporations suggests itself as a means of creating a barrier between interstate commerce and the industrial activities which are to be safeguarded against regulation.

In any event, I have no doubt that the interstate commerce powers of Congress, if relied upon alone, must prove inadequate, both legally and practically, to protect either business or labor, in cooperation, organization, or maintenance of fair standards of conduct.

I am almost ready to believe that there can be no beneficial regulation of general business relationships unless, in addition to the power to regulate interstate commerce, there is a Federal power which, for the sake of uniformity in regulation, can be exercised in

fields that are beyond the limited scope of interstate commerce, and which can provide for a deeply penetrating attack upon unfair practices regardless of their isolation within individual States.

Presently I shall invite the committee to examine my contention that long-standing equitable principles, and the existing jurisdiction of the Federal equity courts, in suits between citizens of different States, can be availed of, with high practical efficiency and with perfect legality, to permit the application of uniform regulatory policy to intrastate as well as interstate business, so as to supplement the pressures which can be called into operation under the interstate commerce powers. The utilization of both these sources of Federal power should permit the application of such regulatory policy as Congress may declare, to all business relationships which have any material importance to our national life.

It is within the power of the Federal Government as expressly conferred by the Constitution, and it may well be considered to be a duty of the Federal Government, to safeguard citizens of each State against the inequitable conduct of citizens of each other State. I propose the utilization of these circumstances for the purposes which we have in view.

If my reasoning is sound, there is no need for the Government to content itself with the confining of Federal regulation to interstate commerce alone.

I suggest, therefore, that Congress may approve new governmental and procedural policies along the lines which presently I shall indicate.

I have in mind a mere extension of the long-standing doctrines of unfair competition in the Federal equity courts. An illustration of this, and the utility of the diversity of the citizenship jurisdiction arises from two decisions made by Federal Judge Fake in the district court in New Jersey. Recently Judge Fake was called upon to consider intrastate activities that were being prosecuted as violations of a code. Judge Fake decided, I think perfectly soundly, that the interstate commerce powers supposed to be exercised under the code did not extend to the intrastate conduct of the defendants, no matter how vicious that conduct might be.

In the same court, before Judge Fake, a couple of years ago, I had occasion to represent a New York corporation which had its main factory in the State of New Jersey. The suit was for unfair competition against a New Jersey defendant whose business was confined entirely within the State of New Jersey. I called upon the traditional jurisdiction of the Federal courts over suits between citizens of different States. I got a sweeping decision from Judge Fake.

There were not and could not have been in that case any issues of fact or law touching interstate commerce powers. The court was exercising the right expressly stated in the Constitution and conferred by acts of Congress to try cases between citizens of different States.

There is no difference in principle between that sort of litigation for the regulation of unfair conduct and the sort that I suggest availing of at the present time. In any regulatory effort, such as is being considered here, the regulations necessarily have a double aspect. Unfair conduct theoretically is an offense against the whole people. At the same time the unfair conduct is felt most acutely by individuals or individual businesses.

One thing that I advocate as earnestly as I can is the permission to private business to litigate its own difficulties in the Federal courts subject to such control as the Executive Government may exercise through the Department of Justice or through the Federal Trade Commission.

Senator BARKLEY. What about cases involving unfair practices as between citizens in the same State? In that case the courts cannot be utilized.

Mr. JANNEY. That is quite true. Going back to New Jersey for illustration, when a citizen of New Jersey resorts to unfair conduct, in business confined to New Jersey, against another citizen of New Jersey, the Federal courts cannot deal with that. In any event, that is beyond the power of the Federal Government and I think beyond the interest of the Federal Government. But the moment one of those competitors does one of two things; steps into interstate commerce or offends against a citizen of another State, he makes himself almost immediately amenable to Federal regulation under the Constitution.

Senator BARKLEY. Have you given thought to the possible application of the Shreveport doctrine to commerce? In that case the court held, and the decision was subsequently followed by provisions of the Transportation Act of 1920, that where a railroad engaged in intrastate business adopts such rates or other things with which it deals as materially to affect interstate commerce and affects other carriers engaged in interstate commerce, that the Federal Government can take jurisdiction. It did take jurisdiction by enactment of the Transportation Act which has been upheld by the Supreme Court. Of course, the Constitution discusses commerce among the States, and the courts have held that that means the facilities over which commerce is transported, as well as the actual thing transported and if the courts would hold that Congress could take jurisdiction over the regulation of rates and practices of a railroad engaged in intrastate commerce, if that practice materially affected the welfare of the other carriers engaged in interstate commerce, why could it not apply the same doctrine to the commerce itself which is transported by such a railroad and say that if its practices are of such a nature as materially to affect the welfare of those engaged in interstate commerce, if its cut-price practices are such as to undermine business that might come into the State from another State which would be affected and which would be interstate commerce, or if its wages are so low as to allow it to compete with intrastate business in such a way as to practically deny interstate commerce to a concern engaged in it, would you think that the court would carry that doctrine to the same extent that it has in the railroad cases, and if not, why not?

Mr. JANNEY. I think that is quite possible, Senator. The doctrine may be extended to all sorts of things which heretofore we have not considered as coming within the field of interstate commerce.

Eventually however, and this is the thing that worries me, the Supreme Court must draw the line somewhere, else the constitutional reference to interstate commerce is meaningless. The line must be drawn somewhere, and wherever it is drawn, I feel that the intrastate area which is not subject to direct Congressional control under its interstate commerce areas, that intrastate area must contain a

great many relationships involving labor, involving all sorts of things which should be subject to Federal regulation if there is some way in which that can be exercised.

Senator BARKLEY. I am interested in your suggestion of the way to get around it, assuming that the Supreme Court would not sustain a sort of Shreveport doctrine in business as it has in transportation. Frankly, I cannot see any difference between the power of Congress to regulate the instruments of commerce than its power to regulate the commerce itself.

Mr. JANNEY. I think that that is a perfectly valid comment, Senator.

Senator BARKLEY. I am not trying to commit you to anything, but just thinking out loud myself about it, and it is an interesting field for speculation. Of course, the courts wrote into the commerce clause of the Constitution, railroads. There were not any railroads when it was written, and nobody thought of one. And they have written into it all other forms of transportation, holding that Congress has the same power over the thing that carries commerce that it has over the commerce that the thing carries, which it seems to me is sound doctrine. The trouble I find with your suggestion of the diversity of citizenship is that that would apply to a relatively small proportion of these very unfair practices which you feel ought to come under some jursidiction for regulation, and would leave without remedy the citizens of the same State who might be suffering more acutely from that practice than somebody in another State.

Mr. JANNEY. I think, Senator, you will find that the cases involving anything of national importance will be very rare in which a diversity of citizenship jurisdiction cannot be raised.

Senator BARKLEY. Of course, that would relegate each complainant to a Federal court procedure, even though the court might hold that as between two litigants, between citizens of two different States, that a certain state of affairs existed and constituted a practice which authorized a remedy in equity, and somebody else might be engaged in the same thing with respect to some other citizen in another State, and yet in order to get the benefit of that remedy, he would have to go into court and sue and prosecute his case and get a judgment.

Mr. JANNEY. Here is the practical operation of that sort of thing, and it has been thoroughly effective in this field of unfair competition. Those cases are tried and the law becomes established. After that it is generally futile for anybody to attempt the same species of unfair competition again, because very largely the decisions in the Federal Courts are uniform. They become uniform by a process of evolution which is fairly speedy.

I have given considerable thought to the phases of the matter which you have suggested, Senator, and I would like to go ahead if I may.

Senator BARKLEY. I did not want to interrupt you; I am sorry. I have to go to another committee. I am very much interested in your testimony. I have to go to another committee for a few moments. I do not know whether you are going to conclude today, but I would like to pursue this matter further with you at the first opportunity.

Mr. JANNEY. Very good, Senator; I will be very glad to.

I should like to sketch the historical background of my proposals, so that the truth shall appear that I recommend nothing which is beyond sound legal tradition. I ask nothing except a needed acceleration of an evolutionary process which has been under way already for considerably more than a century.

There is no startling novelty, nothing radical nor revolutionary, in either the aspiration or the endeavor to enforce fair standards of conduct in business. On the contrary, the process of improvement in business ethics has been in operation since the earliest days of production and exchange. As civilization has advanced by conceiving higher and higher ideals of social responsibility, individuals sooner or later have been persuaded, or forced, to comply with progressively higher standards of behavior.

Unfortunately, the application of new standards in practice has lagged behind the march of abstract social ideals. In many instances, years of agitation, and eventually coercive pressure, have been required to effect reforms which today we would acclaim quite spontaneously.

The relatively slow process has been accented from time to time by instances of marked acceleration, in which evils acquiesced in for ages have been corrected during a single life-time. The possession of slaves, as personal property, had been sanctioned since the beginning of recorded time. Slavery was an established social and economic institution in this country. It was assailed and defended for many decades before it was finally extinguished.

One form of slavery ceased to exist when the right of property in human beings was abolished. Other forms persisted, and new forms appeared as the increasing preoccupation with industrial development discovered new opportunities for the satisfaction of greed. These other kinds of slavery have been subjects of attack and attempted defense for many years: Child labor, sweatshop oppression, the exploitation of workers who have had no choice but to accept inadequate wages for excessive hours of work.

All of these forms of slavery have been utilized as dependable bases for cutthroat competition. The oppression of workmen, and women and children, has been profoundly vicious, not only in its effects upon employees, but equally in its degrading influence upon standards of conduct in competition. Conscientious employers, who would deal fairly with employees if they could, have been confronted by the destructive competition of rivals who have been able to cut their selling prices to the lowest levels, simply because they could overwork and underpay their employees, and thereby reduce their costs of operation. This has tended to promote the survival of the morally and socially unfit, and to drag down to similar low standards, the relatively high-minded competitors who have tried to keep wages and work hours at decent levels.

No one can be so deluded as to suppose that section 7A is merely an altruistic sop thrown to labor. On the contrary, the substance of that section, if it were enforceable, would represent a great boon to employers, who need, and sorely need, every means of protection against rival enterprises which gain their competitive strength by sapping the bodies and souls of their employees.

Besides the exploitation of labor, other offensive practices have been devised to aid the autocratic control of factors of industry and commerce: Restraints of trade seeking to obstruct the legitimate flow of competitive activities; attempts to monopolize; price discrimination; stifling of competition by forcing customers of one concern to refrain from buying from competitive sources; the interlocking of corporate controls through acquisitions of capital stock or the election of common directors; numerous species of unfair trade.

Long before the specific purposes of N. R. A. had been dealt with by Congress, the practices just enumerated had been prohibited in the Sherman Antitrust Law, enacted in 1890; the Clayton Act, 1914; and the Federal Trade Commission Act, 1914.

Much complaint has been made against these laws because, it is said, they prohibit restraints of trade in such general terms that they discourage every effort, however laudable, to introduce cooperative planning into business, and tend to force industrial and commercial rivals to acquiesce in the conditions of cutthroat competition. Such complaint, however, is not immediately germane at this point; I here cite these laws simply to illustrate efforts which Congress has made to elevate standards of conduct in a considerable range of business relationships.

Congress has enacted laws for the regulation of railroads, and of traffic in food and drugs, and has legislated upon patents, trade marks and copyrights. All those measures pertained, in one way or another, to the regulation of competitive practices and to the protection of business against unfair dealing.

For more than a century before the Sherman law, the courts of equity in England and then in the United States had formulated and enforced rules against unfair trade practices. In most instances the courts developed their own doctrines by adopting from time to time new concepts of the duty of equity to remedy wrongs. By a gradual process they have erected the so-called "law of unfair competition" and, over the years, they have extended relief into wider and wider fields in order to offset the ingenuity with which new kinds of unfair conduct have been invented.

This process, however, moves slowly; quite properly so. Courts must assure themselves that they are correctly interpreting the will, the customs and the ideals of the people. Necessarily, their formulation of new doctrines and their application of equitable remedies to new offenses, must lag behind the advance of popular ideals, and must await the consolidation of those ideals into a fairly certain and permanent consensus of public opinion. The fact that courts are so little swayed by gusts of unmatured or hysterical popular thinking, is the very foundation of the stability of our democratic institutions, which our judicial system insures.

On the other hand, when public opinion is given expression by legislative declarations of public policy, courts of equity are quick to exercise their abundant jurisdiction to arrest and prohibit transgressions against such policy, and to compel redress to injured parties.

It is evident, therefore, that the purpose to improve conduct in business has a most respectable and orthodox background of tradition, and that the processes, already long under way, can be accelerated, and should be when new light discloses meritorious ends to be gained.

The important questions remain, whether specific objectives are worth striving for, and, if so, whether they can be attained by practicable means.

In approaching the formulation of policy, it is important to distinguish sharply between (1) the social and economic purposes sought to be served, and (2) the governmental and procedural methods to be employed.

The criticisms that have been aimed at N. R. A. have not sufficiently distinguished, I think, between these two questions.

In my own opinion, N. R. A. is unconstitutional in whole or in considerable part. I can see no constitutional ground for the supposition that codes can have the force of binding law, as to all the particulars which business men have chosen to propose and executive agencies have been willing to approve. I have no doubt that the current governmental and procedural policies under N. R. A. are gravely defective. I agree fully with those who charge that the administration has gone too far in the regimentation of business under executive dominance. I think we should abandon forever the theory of Government by a process of "cracking down."

It has been charged in some quarters, that objections such as these are fatal, and should preclude any thought of perpetuating the N. R. A. program in any form whatever. The objections I venture to make, however, are pertinent only to matters of governmental and procedural policy. Many of the critics who take the same ground that I do, ignore the deeper purposes, and would forsake them altogether, simply because they are dissatisfied with the methods and means currently employed, which may well be modified or wholly superseded without deflecting the essential aim of the N. R. A. movement.

On the other hand, although I advocate a thoroughgoing revision of the procedural policies, I have no difficulty in subscribing wholeheartedly to the purposes of N. R. A. which were characterized by President Roosevelt in his message to Congress of January 3, 1934. [Reading:]

> We seek the definite end of preventing combinations in furtherance of monopolies and in restraint of trade, while at the same time we seek to prevent ruinous rivalries within industrial groups, which, in many cases, resemble the gang wars of the underworld and in which the real victim, in every case, is the public itself.

This defines a middle path between unwholesome extremes. It proposes the maintenance of two protective walls to flank the path, one to prevent unreasonable restaints upon freedom to compete, and the other to place needed limitations upon cutthroat competition. There can be no objection to such purposes, except upon the part of those who wish to persist in monopoly, unfair discrimination and the like, or in industrial or commercial gang warfare.

The antitrust laws and the Federal Trade Commission Act had already built one and had started the second of the walls proposed by the President, the one to exclude improper restraint of trade, and the other to shut out some species of unfair competition. The basic policies of those laws are entirely sound whether or not their language is too general. They aim to prohibit only those things which should be prohibited. If in some instances the interpretation of the laws has been unsatisfactory, that is relatively easy to remedy if further legislation makes clear the intention of Congress that such interpretation shall be liberalized. Perhaps the laws themselves are open to im-

provement, but that is not our immediate problem. Amended or not, they should stand as barriers against excesses in the exercise of the new privileges of organization and cooperation defined in the present N. R. A. statute or in such legislation as may modify or supersede it.

Beyond the scope of the antitrust laws, lies the field of regulation which N. R. A. has attempted to cover. If that field can be covered practically and efficiently by reasonable and enforceable regulations, then the essential purposes of N. R. A. can be accomplished.

I shall waste no time in discussing the validity of the desire expressed by the President, "to prevent ruinous rivalries within industrial groups." It seems incredible that anyone could honestly oppose that desire, or could conscientiously resist the effort to require our business institutions to maintain decent standards of conduct in all their relationships, among themselves and with their employees.

The question remains: How to formulate governmental and procedural policies that will serve the ends of N. R. A. practically and lawfully?

My first proposal is that Congress enact its own legislation, instead of attempting to authorize the executive agencies to do so, either alone or in cooperation with business or labor units.

With this in mind, I would ask Congress to declare, in a new statute, that it intends to supplement but not to repeal or modify the antitrust laws and the Federal Trade Commission Act; and to declare that those laws and the new statute are to be interpreted collectively as a comprehensive declaration by Congress of policy concerning standards of conduct in industry and commerce.

Next, I would ask Congress expressly to approve cooperation and organization in business for all legitimate purposes, provided such cooperation and organization be fair and reasonable in method and operation, and be calculated to serve purposes that are sound socially and economically, and be not violative of the policy of any law of the United States. By ordinary rules of statutory construction, the new statute would influence the interpretation of the old, which would be subject to the newly granted permissions to cooperate.

Beyond this permissive declaration, the regulations to be made would be mainly prohibitive. Therefore, I would ask Congress to condemn and proscribe, to the full extent to which it may do so under the Constitution, every species of unfair conduct in business.

With that as a foundation, I would then ask Congress to consider the proposed regulations in two categories:

First, those which we may call "approved regulations" to which Congress is willing to be definitely committed; second, those which we may call "conditional regulations", including permissions and prohibitions which Congress will not definitely approve, but which may be dealt with experimentally, so to speak, subject to ultimate vindication or rejection by the courts. This second category would include numerous regulations which today are subjects of sincere differences of competent opinion, but which business should deal with, always subject to judicial control, until adequate trial has demonstrated the desirability and practicability of the regulations.

Thus far N. I. R. A. and the codes have not distinguished between these two categories, but have attempted to impose upon everyone subject to a code, the binding obligation to observe all regulations

announced in the code, whether or not experience, or logic, or both, have sufficiently established their value and feasibility.

And that very failure to distinguish between approved regulations and mere tentative regulations has been the reason why all of the exemptions and exceptions and the trial and error method have been resorted to time and time again. If Congress will declare the approved regulations which it wants to utter as Federal legislation, that is one thing. Then business and the executives may formulate tentative regulations as they like.

As to the first category, the "approved regulations", I would ask Congress to enumerate a list of species of conduct which shall be deemed actionable in any suit which may be brought under the authority of the new statute, or under any existing jurisdiction of the Federal courts. For example, I have listed illustrative species of unfair conduct in section 9 (p. 4) of my draft act. By such an enumeration, Congress would declare its own policy, to instruct and warn the public, and to guide the courts; and that would be the voice of Congress, and not the utterance of business or of the executive branch of the Government.

As to the second category, the "conditional regulations", I would ask Congress to authorize that these be dealt with in codes to be formulated by industrial, commercial, or labor organizations, subject to executive approval.

Obviously, if Congress has enacted the "approved regulations" so that they have become substantive law, the provisions and enforceability of the codes would have much less importance than they have under N. R. A. where they are the only actual declarations of any regulations.

The codes, in one aspect, could supply details of policy appropriate to respective business areas, which details would involve too many variables to be dealt with explicity by Congress.

For illustration: If Congress specified as forms of unfair conduct, the employment of labor for unfairly low compensation, and the exaction of unfairly long hours of work, a code should define a minimum wage level and a maximum hours level, subject to executive approval.

Such code provisions would give concrete effect to the "approved regulations" declared by Congress. Nevertheless, the specific code provisions should remain in the category of "conditional regulations" until they have received not only the executive approval, but also judicial approval, if necessary. This point will be clarified when I come to discuss the legal status of approved codes.

In another aspect, codes may deal with a variety of conditional regulations to which Congress has not expressly committed itself; and they should be subject to executive approval, and to judicial vindication or rejection.

At this point the question arises: What should be the legal effect of codes which have been formulated by business or labor organizations and approved by executive agencies? In my view, it would be utterly wrong to give these codes the force of binding law.

Instead, I recommend that Congress make the codes prima facie evidence upon three points, namely; (1) That the code provisions are valid expressions of sound public policy; (2) that transgressions against such policy are actionable; and (3) that conduct expressly

sanctioned by a code is not violative of the antitrust laws or the Federal Trade Commission Act.

I shall discuss the purpose of this latter recommendation after I have explained my aversion to codes as binding law.

As I have already pointed out, the very method by which codes have been written and promulgated, and under which the supposed laws have been made and unmade, and exemptions and exceptions have been decreed, demonstrates the fallacy of the assumption that the codes should have the force of law. The fluctuations in the law would be, as they have been, so frequent and rapid that no one could keep pace with them.

But, if codes are to be made at all, they should be made by the joint action of business and executive agencies. Obviously, Congress cannot possibly make codes, in necessary detail, appropriate to respective groups.

Also, it must frequently happen, perhaps usually, that a code must express the will of the majority of a business group, opposed to the dissent of a minority. As the Administration has interpreted N. I. R. A., the majority will should be imposed upon the minority, subject only to Executive approval.

Similarly, some business organizations have advocated this character of majority control. For example, on December 19, 1934, the Joint Conference for Business Recovery, which met at White Sulphur Springs, proposed that:

> Under appropriate safeguards, approved codes of fair competition should be binding upon all members of the industry (from the New York Times of Dec. 20, 1934).

It did not appear in the report what those safeguards should be.

Of course, this does not presuppose unanimous consent to a code by "all members of the industry." That would be too much to expect. Nevertheless, an objecting minority is proposed to be bound by the opinion of the majority, if only the executive agencies can be persuaded to concur in that opinion.

I contend that business would be threatened with results of the most pernicious character, if this theory of majority rule, in the making of binding code law, were to prevail. Especially, the dissenting minorities, regardless of the righteousness of their dissent, would be threatened with injury for which they could procure no redress "by due process of law" or otherwise.

It requires no fertile imagination to visualize a majority of an industrial group who would propose code provisions disadvantageous to the minority and to the general public. No executive agency could be omniscient to predict and forestall the minutiae of unfairness and unreasonableness that might be favored by majorities whose collective voices would be capable in many instances of drowning out minority opposition. It is not difficult to suppose that the weight of majority opinion might lead to executive approval of code provisions that would turn out to be definitely and illegitimately injurious to minorities and to the public.

But the advocates of this majority rule argue that the majority always rules, in the Nation, in the State, in the municipality, in all sorts of clubs and associations. Why not in the formulation of codes by business groups?

To answer lies in a reason of the strongest character. If a business majority be entrusted with the power to make binding code law, subject only to executive approval, the result would be to establish law of the most solemn economic and social import. New law would be imposed, not only upon an isolated group, a more or less distinct entity, justly enjoying a considerable autonomy. The effect of the code law must have infinite ramifications, involving all the relationships of the particular code group with other industry and commerce, and broadly affecting the industrial and commercial interests of the country at large. The law would control not only the relationships among the members of the group, but also the relationship of each member of the group to innumerable other points of contact which he has with the affairs of the Nation.

And such sweeping effects are proposed to be placed within the reach of a majority. A majority of what? Simply the partisan majority of a group which is microscopic compared with the majority of the population of the country, and of other businesses and of the masses of employers and employes, who are to be affected directly or indirectly by the code.

Suppose that a majority, intent upon its own interests, procures the enactment of a code which would not be countenanced, if it were presented in detail to Congress or could be submitted to the vote of the people. Suppose that the dissenting minority is in the right from every social and economic viewpoint, and is threatened with gravely inequitable consequences. What is to be done about it?

If it be argued that the executive agency charged with the approval of the codes would be an efficacious safeguard, then the obvious rejoinder is that this cannot be so unless the executive agency is gifted with clairvoyance to perceive, in advance, all the inequities which may be perpetrated under the authority of the code.

But, it will be said, if inequities appear, the executive agencies can require revisions of the code or may grant exemptions. Suppose, however, the executive agency decline to recognize the inequities or to take any action upon them. The code would remain binding law and an instrument of oppression against the minority who would have no redress in the courts or elsewhere, assuming, of course, that the codes are constitutional and are binding law as they have been considered to be in practice under N. I. R. A.

Senator COUZENS. May I not ask at this point if that is not the very reverse of what the labor unions want? Do they not want a majority rule in collective bargaining?

Mr. JANNEY. The labor unions do want, I think, a majority rule in collective bargaining.

Senator COUZENS. You do not approve of that?

Mr. JANNEY. I do not approve of the controlled regulation of any relations in business that are going to affect the entire country by simply the voice of a majority of a group which is so infinitesimal a thing—that majority—compared to the field of the effect that the regulation is going to have.

Senator BARKLEY. Then in a country like this, where all government is by a majority and we accept the principle of majority rule, if there is going to be the exercise of any authority over business, and if the exercise of that authority is to be left to business, how else can you ever effect it except by the majority?

Mr. JANNEY. I am coming to that in my notes in my next point, Senator. I am saying that the majority in a business group should not be authorized to make rigidly binding law. I say that the majority opinion must be recognized and should undoubtedly control in the making of codes, but the codes in the end should not be binding upon the entire country and the courts and the Supreme Court until the codes have been upheld after judicial scrutiny.

Senator BARKLEY. Of course, if you are going to have codes or regulations affecting business, you have either got to leave it to the business to be regulated or you have got to impose legislation upon them by the Government itself. It is just like we pass other laws affecting everybody.

Mr. JANNEY. Except, Senator, we still have, thank Heaven, the Federal courts, who in the end should be in the position to say "Is this thing law or is it not?" We still have Congress to say what should be law.

Senator BARKLEY. If you are going to regulate business, you have got to regulate it by the Government passing a law superimposing its regulation without regard to the facts, or you have to leave it to business to work it out. If you leave it to business, I do not know of any way that you can work it out except by a majority. You will never get unanimous consent to anything, not even to one sentence.

Mr. JANNEY. And I advocate exactly that, Senator.

Senator BARKLEY. I do not want to anticipate your argument.

Mr. JANNEY. I think, Senator, you had withdrawn when I made the suggestion that Congress should now consider regulations in two categories; one of approved regulations and as to which Congress is today ready to commit itself and to set forth in a catalog of prohibited things.

The other category, conditional regulations, which should be dealt with in the codes that may be formulated by business and approved by the executives.

But my point is that those codes when so made, should not then become entirely free from control by the courts and control by Congress.

Senator BARKLEY. Your theory, is to have part of this territory covered by mandatory regulations, and partly by option?

Mr. JANNEY. Yes. I want Congress to do its own legislating on the things to which Congress is ready to commit itself. Then when the business and the executives want to do some legislating, make them do that subject to the approval of the courts.

Senator BARKLEY. The legislation itself would have to be subject to the approval of the courts.

Mr. JANNEY. As to constitutionality, of course. But I mean as to validity of regulation and fairness. I do not mean economic soundness, because that is not definitely within the capacity of the courts to deal with, necessarily.

Senator BLACK. May I ask if it is a fair interpretation of what you have said that what you favor is that if laws are enacted which uniformly have the binding effect of laws upon all the people, including consumer—all of the people—that those laws shall be enacted by representatives of all of the people selected by constitutional method to enact laws, and that if we delegate to a group of business men

the power to fix rules or regulations, they shall be rules or regulations and not have the binding effect on anybody of laws.

Mr. JANNEY. That is precisely my point. And I suggest that codes to be enacted by business and the executives shall not have the force as though they had been enacted by Congress, but shall have weight as prima facie evidence, as prima facie opinion evidence, a weight to which they are obviously entitled if they represent the expression of the sound and considered majority opinion.

Senator BARKLEY. To have weight where?

Mr. JANNEY. In the courts. Wherever they are called in question.

Senator BLACK. In other words, you still believe in the majority rule to enact legislation, either by the people of a democracy as they do it in the small democracies, or through their representatives as we have them in this republic, but you think that in order to have the majority rule, it must be the majority of all of the people instead of the majority of a group who want to make all of the profits they possibly can get, and who would like to be actuated only as human beings are, largely by their own interests.

Mr. JANNEY. That is precisely what I mean, Senator. At the same time there is an opportunity to put in motion a process of evolution that can work out enormous advantages, and I believe in giving to business the greatest flexibility of opportunity to do this experimentally, but not to experiment in the making of binding law that shall control everybody in the country.

When one advocates the theory of majority rule in the making of code law, he is likely to involve himself in considerable difficulty. This is illustrated in the report of the Joint Conference for Business Recovery, already cited. Quoting therefrom:

> As to actions in conformity and compliance with provisions of approved codes of fair competition or approved voluntary agreements, the new legislation should supersede any other statute with which it might otherwise conflict.

That is to say, if conduct in conformity with an approved code would be violative of the antitrust laws, then the effect of the code would be to supersede the antitrust laws, in fact to repeal them so far as concerns that particular conduct. And that proposed repeal of laws solemnly enacted by Congress, is to be brought about by the voluntary action of a business majority, subject to the making and unmaking of the code, and to exemptions and exceptions thereunder, in the discretion of the executive agency.

Here again the question arises:

Can the executive agency be depended upon as an effectual check? To be so, it must adjudicate the issue of possible conflict between the antitrust laws and the sanctions of the code; and if its adjudication vindicates the sanctions as against the antitrust laws, then the executive-legislative-judicial agency promulgates a law which supplants the antitrust laws, and the result is assumed to have repudiated congressional action, and to be binding upon the Federal courts no matter what they may think about it.

Another difficulty appears when the report of the "joint conference" discusses the "blue eagle." The report says:

> The Government in its purposes should not require compliance certificates of any kind nor discriminate against any person not determined by due process of law to be violating a code.

But, if a dissenting minority has been made subject to a code, against its valid objections, that minority has already been discriminated against by the majority, and by the approving executive agency; and the resort to "due process of law" has been postponed to a disastrously late stage in the program. The code law, good or bad, has been enacted, at the instigation of the majority, ignoring injustice to the minority. Thereafter, a recourse to "due process of law" is a largely futile thing because it means no more than to coerce the dissenters into acquiescence in the injustice which already has been imposed upon them. If the code is binding law, the court which is to exercise the "due process of law" can do nothing to remedy the dissenters' unfortunate predicament.

Again, the "joint conference" report says:

> The administrative agency should have the right to terminate, after public hearing, existing codes or those formulated under the new act. Industry, through its representatives, should also have a right to terminate such codes or proposed amendments to them.

Apparently this suggested right of industry to terminate codes or amendments is to be enjoyed independently of the executive agency.

The proposal just quoted would mean that a code should remain the law of the land, as though enacted by Congress, until the executive agency, after public hearing, decides, in its discretion, that the code should be terminated; or else until the business representatives, without even the formality of a public hearing, themselves decide that the code should be terminated and that the people and the courts of the United States should be relieved from, or deprived of, that particular law.

Another illustration: Suppose that the steel industry—which is selected simply as a convenient name—propose a code by unanimous vote, not merely by majority rule. Unless the code provisions be overtly and flagrantly improper, the executive agency is likely to approve on the strength of the unanimous backing. Assume that the code is then promulgated as law, binding upon—and benefiting, we may be sure—the industry as a whole.

But now suppose that the code, in practical operation, places intolerable burdens upon the construction industry which must look to the steel industry for essential materials; a member of the steel industry, recognizing the burden on his customers, undertakes to lighten that burden by violating the code; this dissenter is haled into court.

He has no defense. He has deliberately broken the code law. The entire construction industry stands ready to support the dissenter's contention—if he could make it—that the code is vicious in its broad economic effects. What of it? That has nothing to do with the case against the dissenter, and, if the code is assumed to be binding law, the court is not entitled to listen to any such evidence. The dissenter must be punished, the construction industry must suffer, and the public must bear the consequences, until the executive agency can be persuaded to exercise its discretion in unmaking the law or granting some dispensation under it. And these effects would have been brought about by the action of a majority or unanimity, in a single business group.

Any such majority, or unanimity, is too minute a factor in the social organism to be entitled to that wide sweep of opportunity.

Again, it will be said, that the hypothetical predicament, which I have just described, might be remedied, eventually, by vacating or revising the code by action of the executive agency. The retrospect of past months, however, cannot encourage the belief that the executive agencies should be called upon to perform the judicial functions which must be exercised, if business is to be safeguarded against an overzealous effort to enforce regulation by executive fiat, under the frequent, and doubtless unavoidable, vacillations of executive policy.

The source of relief to business, and the traditional source, is to be found in the courts. And the way to make that relief accessible, while otherwise serving every legitimate purpose, is to establish codes as prima facie evidence, and to reject the theory that they should be binding law.

Undoubtedly, in any business group, the majority opinion should prevail for all preliminary purposes. Generally speaking, the majority opinion should outweigh the minority opinion in its influence upon the executive agency, and upon the terms of any code which may emerge from the deliberations of the executive agency.

Senator COUZENS. When you speak of majority and minority, do you speak of it with respect to dollars invested, the number of employees, or the size of the industry, or how?

Mr. JANNEY. Because, Senator, we are trying to build with things which down at the bottom involve ethical principles——

Senator COUZENS (interrupting). Yes; I understand that, but——

Mr. JANNEY. I say that the numerical representation and not dollars and cents representation——

Senator COUZENS. Nor the number of employees?

Mr. JANNEY. Nor the number of employees.

Senator COUZENS. In other words, a big industry would have only the same weight as a little industry?

Mr. JANNEY. I feel rather strongly on that, Senator, that that should be.

Senator BLACK. As a matter of fact, if we adopted in the law the constitutional method, the employer would only have one vote.

Mr. JANNEY. I think the employer should have one vote.

Senator BLACK. He would have one vote?

Mr. JANNEY. Yes, sir.

Senator BLACK. He would have one vote in electing Senators and Congressmen that passed it?

Mr. JANNEY. Yes, sir.

Senator BLACK. And it is your theory that if we are going to turn the question of making laws over to business, that the employee should have only one vote, even though he should be the United States Steel Corporation or any other big companies?

Mr. JANNEY. Yes.

Senator BLACK. Then you would favor an amendment which I offered to this bill originally, providing for that exact thing if the law is to be continued?

Mr. JANNEY. Yes, sir. And in a draft act which I am going to invite this committee to examine—I have copies of it here—I suggest numerical representation, and not any representation on a dollars-and-cents basis or employee-mass basis or anything of that sort.

I was just saying that in any business group, the majority opinion should prevail for all preliminary purposes.

When the code is submitted to any judicial body, it should still represent the weight of the majority opinion, which should prevail unless controverted convincingly by evidence that the majority opinion is erroneous and the resulting code is defective. The code should carry the presumption that its provisions are sound. But that presumption should be rebuttable upon a proper showing. In other words, the code should have a recognized prima facie effect.

What this means is simple enough. In any prosecution for code violation, the code would stand as valid and enforceable unless the defendant show, by controlling evidence, that the provisions under which he is charged should be invalidated. The burden of proof would rest upon the defendant. He would be bound unless his attack upon the code is supported by at least a strong preponderance of evidence. The defendant would be at a disadvantage, but he should be so because of the probability, at the outset, that the majority of his fellows, and the executive agency, were in the right when they promulgated the code.

On the other hand, if the codes were prima facie evidence, the courts—and I emphasize the courts—would have full opportunity to correct injustices and to relieve against inequity.

Senator COUZENS. When you did that, would you let any other industry or interest testify in the case before the court, outside of the industry involved?

Mr. JANNEY. Always.

Senator COUZENS. Take in anybody?

Mr. JANNEY. Yes; any evidence bearing upon the suit.

Senator COUZENS. In case it was doing an injury to another industry?

Mr. JANNEY. Yes. Before you came in, Senator, I had explained that I had been practicing in the field of unfair competition for 30 years. We have the same sort of issues there all the time, and we call in any evidence which the court considers relevant on the issues, which, after all, are issues of equity and fair play.

Senator BARKLEY. By the way, in that connection, in spite of all the lawsuits that have been brought by lawyers, including yours, involving unfair practices, which are isolated cases compared, probably, to the number of unfair practices that have been engaged in, the practices have continued and did continue prior to the adoption of codes, and to some extent since that, and I am wondering whether, getting back to your remedy for the elimination of unfair practices insofar as intrastate business is concerned, whether we can have a hope by those processes to eliminate them.

Mr. JANNEY. We are in a very hopeless condition, Senator, if we cannot look to the courts to do that.

Senator BARKLEY. Was it not because of that situation that the Federal Trade Commission was created to get away from the delays of courts and to form a body here who could have jurisdiction to investigate, either on their own motion, or on complaint, issue orders to cease and desist, and things of that sort, and in spite of all that that commission has done, unfair practices have continued and gone on. I am wondering whether we can ever by purely court processes involving litigation between individuals or between litigants representing two sides or representing individual units of business, bring about such a code of laws and decisions that somebody will not

continue to violate the principle involved in the decisions on the theory that the other fellow won't take it into court.

Mr. JANNEY. I think there is a very general misconception of the difficulty and the time involved in proceedings in the Federal equity courts. In a proper case, one can get a temporary restraining order in 24 hours in the Federal courts. He can prosecute a motion for preliminary injunction in 30 days in the Federal equity courts, except in the most congested districts where the judges are overworked—there are not enough of them—you can get a trial very promptly. That is not true of the Federal Trade Commission, which has a colossal job for its personnel as compared to the circumstance that there are Federal district judges, at least one in every judicial district in the United States and scattered all over the country, accessible to anyone who needs their assistance. The processes in the Federal courts are not as slow as they must necessarily be in an executive tribunal like the Federal Trade Commission. I am thoroughly in favor of the Federal Trade Commission; it performs an extremely useful function, but it does not cure the difficulty.

Senator BARKLEY. I would not, of course, withdraw from the Federal court jurisdiction to pass upon any question which they ought to pass upon and have the right to pass upon, but after you have gotten your injunction in the Federal court, after you have gotten your final decision, while it is theoretically true that the principles of law declared by the law would be binding upon anybody, as a matter of fact, it is only legally binding to the two parties to the litigation.

Mr. JANNEY. That is always true in any judicial decision, but it builds up a body of law gradually; it does not do it all at once; and I think one of the mistakes under N. R. A. is that it has attempted a revolution to procure results which can never be procured except by evolution. The only way you can get enforcement of law is by sound jurisprudence which by its deterrent effect will minimize the need to resort to the courts. That has happened in so many different connections——

Senator BARKLEY (interrupting). Of course, that sort of litigation cannot go to the decision of questions like wages and hours of labor.

Mr. JANNEY. It can if Congress chooses to take the necessary action.

Senator BARKLEY. Yes; but I mean just taking the equity jurisdiction of the Federal courts.

Mr. JANNEY. At the present time the Federal equity courts have not gone so far as to say that the payment of low wages, no matter how low, is a species of unfair competition which they will consider actionable. They need legislative encouragement to take that position, and that is one of my proposals, that Congress give that legislative encouragement.

The CHAIRMAN. Have you your proposed bill written out?

Mr. JANNEY. Yes.

The CHAIRMAN. Submit it to the reporter.

(Same will be found at the close of the morning session of this date.)

Senator BLACK. See if I gather that. Your idea is that Congress should declare, or if it would delegate to a code the right to declare that a certain number of hours constituted an unfair trade practice, a proposition of maximum hours, then the court would determine

that case, and if it went to the Supreme Court it would be a decision just like the gold decision or just like the original decision in *Gibbons* v. *Ogden*, or any of the other decisions, which even though it were a litigated case between two individuals in a court, would become binding as the law of the land.

Mr. JANNEY. Exactly. That is the way our jurisprudence is built up.

Senator BLACK. And you prefer to approach the matter through that method rather than through the method of applying the interstate commerce clause of the Constitution?

Mr. JANNEY. No; I propose using both.

Senator BLACK. You propose supplementing the right of Congress with reference to interstate commerce by the right of Congress to declare unfair trade practices even to matters relating to intrastate commerce, and I presume going upon the theory that interstate commerce has reached such an immense proportion of the commerce of the Nation, that someone would raise a question and litigate it in court, and after the Supreme Court had ruled on it, it would be the law of the land with reference to all of those codes and all of those regulations?

Mr. JANNEY. Yes. I am suggesting further that we utilize to the same ends the jurisdiction of the Federal courts over suits between citizens of different States.

Senator BLACK. I understand that is the way they would reach the court. That is the jurisdiction at present.

Mr. JANNEY. Yes.

Senator BLACK. You simply propose to retain jurisdiction of the subject-matter through getting jurisdiction of the person by reason of the diversity of citizenship, and after that decision is reached, of course, the rule would be the supreme law of the land when declared by the Supreme Court of the United States.

Mr. JANNEY. Exactly. If the codes were prima facie evidence, the courts would have full opportunity to correct injustices and to relieve against inequity. They could entertain all relevant defenses. For example, that the violated code provisions represent attempts to monopolize or to discriminate unfairly against the prohibitions of the antitrust laws. Thus, the courts might uphold any pertinent law, and might apply to any issues on trial whatever law is considered to be relevant; this, intead of having the judicial powers circumscribed by a binding code which is supposed to have been made invulnerable by the magic of majority proposal and executive approval.

Senator BARKLEY. Are you making your suggestion and your proposal as a matter of permanent law?

Mr. JANNEY. I am not advocating either that it be made permanent or temporary.

Senator BARKLEY. My question is based on this, that the President has asked for a 2-year extension of the principles of N. R. A. Certain modifications have been suggested by those who have been engaged in administering the N. R. A. as to the character and number of codes and as to interstate commerce, as you have already indicated, and I am wondering whether your proposition is based upon a temporary extension of N. R. A. or whether it is intended to be advocated as permanent law.

Mr. JANNEY. I feel this way, Senator, about that. If these principles are adopted temporarily for a year or 2 years, that they will be recognized during that interim as something of permanent value, because they are traditional. They are appropriate to our form of government.

Senator BARKLEY. Of course, there is no ultimate decision on anything of a controversial nature in the Federal court until it gets to the Supreme Court and is decided there.

Mr. JANNEY. Yes.

Senator BARKLEY. All sorts of diversified decisions, contradictory decisions have been rendered by various district judges.

Mr. JANNEY. There has been considerable unanimity in the district courts under N. R. A. The weight of opinion is not difficult to follow.

Senator BARKLEY. There have been contradictory decisions?

Mr. JANNEY. Oh, yes.

Senator BARKLEY. Yes; the majority of district courts which had passed on the cases before have been of a uniform nature. But the N. R. A. has been in effect now for 18 months, and we have not gotten a decision of the Supreme Court yet on anything connected with it.

Mr. JANNEY. No.

Senator BARKLEY. And if your proposal is offered as a substitute for the machinery or the procedural phases, that 2-year extension, based upon our present experience, the 2 years would have expired before the Supreme Court would ever have passed upon it.

Mr. JANNEY. Senator, you realize, of course, why the Supreme Court has not passed on anything affecting N. R. A. yet, except in the hot-oil cases. It is because all of the procedure has been experimental, and there has been a reluctance upon the part of the Department of Justice, a perfectly understandable reluctance, both to start prosecutions in the first place, and then to let them get up to the United States Supreme Court.

Senator BARKLEY. I think that a great deal of noise has been made out of the proposed withdrawal of the *Belcher case*. It is urged that the Government is afraid to make a test of that case. That may or may not be true, but appeals have been taken from the lower courts in many cases where there has been an adverse decision, and the mere withdrawal of an appeal in a single case would not to my mind indicate any lack of desire on the part of the Government to prosecute other cases or to test the thing out in a case that may be more representative or in which the facts are simpler, or for any other reason.

Mr. JANNEY. I am not presuming, Senator, to charge neglect or anything of that sort.

Senator BARKLEY. I understand.

Mr. JANNEY. I simply say that there has been so much uncertainty about the matter that we have not reached the Supreme Court yet.

Senator BARKLEY. In an effort to expedite appeals from the lower courts by bringing them directly to the Supreme Court, the Supreme Court took the position that it ought to appear or accept an invitation to appear before a committee of the Senate, and they opposed the passage of that law, so I do not see any prospect for any more immediate expedition of appeals than we have been having in the past.

Senator GEORGE. It did go up directly in the gold case, did it not?

Mr. JANNEY. Yes.

Senator GEORGE. They could go up directly in any of these cases if they wanted to.

Mr. JANNEY. Yes.

Senator BLACK. The Supreme Court Justices, several of them, came to state that they unanimously opposed the bill, not because they opposed expedition, but because they say that there is no difficulty at the present time about getting a case up there if the Government wanted to do it. They stated that it was not necessary at all to take these enforcement cases through a circuit court of appeals to the Supreme Court; if the case was of sufficiently vital importance, they would grant a certiorari immediately, and that it had been done in reference to the gold cases and three other cases. So that there is really no reason at the present time, as a lawyer, why it would take a year and a half—without criticizing or not criticizing—but there is no reason for delay if we wanted expedition.

Mr. JANNEY. I think there is no reason at all why there should have been this delay. I think if the traditional legal principles upon which our Government has been built had been utilized in the original structure of N. R. A., instead of being today in this state of complete uncertainty, we would have already a body of supporting jurisprudence on the subject. Prosecutions would have been started and the courts would have sustained the proper sort of procedure. The difficulty is that prosecutions have been based upon codes which I think are obviously not law upon which prosecutions can be based. I do not think a code is law in any sense today. I am not relying upon my independent opinion in that respect. That is what the Federal district courts have said time and time again.

The CHAIRMAN. Very well; proceed.

Senator GEORGE. In other words, the effort has been apparently at least to depend upon the extra-judicial means and methods.

Mr. JANNEY. Exactly.

Senator GEORGE. That is precisely the trouble, is it not?

Mr. JANNEY. I think that is the fundamental difficulty all the way through.

I ask the committee to note, that I distinguish sharply between the legal effects to be given, on the one hand, to the express prohibitions of unfair conduct, which I suggest that Congress enumerate in the new statute; and, on the other hand, to the code provisions which Congress may authorize business and executive agencies to promulgate.

The first, being declarations of fundamental principle in the authoritative name of Congress, should be controlling upon the courts, to be interpreted by the latter according to the expressed congressional will.

The codes, however, lacking any explicit legislative confirmation, should not be treated as though they could be forced upon Congress by executive action, to become the legitimatized offspring of Congress by some legal fiction of involuntary adoption, whether or not Congress is willing to assume the responsibilities of parenthood over children of indeterminate qualities, left on its doorstep by business majorities and the executives.

In dealing with codes, Congress should invoke the collaboration of the Federal courts. Congress may allow a generous latitude in the formulation of codes, if it will enable the Federal courts to interpret

and apply the will of Congress according to its expressed declarations, instead of trying to require the courts to be bound by legislation emanating from business and the executives.

If the legislative and judicial functions are allocated, as I suggest, to their traditional places in our governmental scheme, there will still remain tasks of tremendous importance to be performed by the executive branch.

The CHAIRMAN. How long will it take you to finish your statement, Mr. Janney?

Mr. JANNEY. Mr. Chairman, I have prepared with great care, with the idea of expediting my statement, a chart showing the relationship of the antitrust laws, numerous other laws, which have been enacted by Congress under the interstate commerce power, and showing the analogies, and also indicating the other sources of Federal power that are in the Federal courts to try suits between citizens of different States——

Senator GEORGE (interrupting). That is statutory; is it not?

Mr. JANNEY. That is statutory, but expressly instructed by the Constitution. In other words, Congress is instructed in effect by the Constitution to give that statutory authority to the Federal courts, and the statutory authority is given to the Federal courts, which means that Congress——

Senator GEORGE (interrupting). But that still relegates it to the law of the forum; does it not?

Mr. JANNEY. Yes.

Senator GEORGE. After you have your jurisdiction.

Mr. JANNEY. After you have your jurisdiction, but your Federal equity powers are derived according to innumerable Supreme Court decisions from the power of the English High Court of Chancery as of the year 1789. Those powers are almost unlimited, the power to give equitable remedies. They are quite independent of the State law, they are quite independent of the existence or nonexistence of any State equity system, and it is within the power of Congress to regulate that Federal equity jurisdiction of the Federal courts, to enlarge it, to restrict it in any way which can be done without making that jurisdiction exceed that authorized by the Constitution.

The CHAIRMAN. Mr. Janney, we must recess now.

Senator BARKLEY. Mr. Chairman, in connection with the statement a while ago, I would like to put in the record at this point that I understand that out of 91 decisions of district courts on the codes, on the merits of the code, 60 of them have been upheld; 31 have not been.

Mr. JANNEY. But all of those cases did not involve, Senator, the constitutionality of the codes?

Senator BARKLEY. I am not able to say just how many of them did.

The CHAIRMAN. I want to, before we recess, put into the record here, at the request of the sender of this telegram, a telegram representing the Industry and Business Committee for N. R. A. Extension, Mr. Ward Cheney, signing it. This is a telegram asking for extension of N. R. A., and the telegram will be inserted in the record.

(The said telegram is as follows:)

NEW YORK, N. Y., *April 2, 1935.*

HON. PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

Kindly read following resolution into record of your committee investigating National Recovery Administration and have it made part of Congressional Record. Sending copies to other members of committee today by registered mail. Resolution "Whereas the Industry and Business Committee for National Recovery Administration Extension is composed of individual citizens, substantial taxpayers, and employers of workers who have had broad practical experience in operating their business under a code of fair competition of the National Recovery Administration, and whereas the members of this committee, in addition to complying with their codes and supporting them financially have given freely of valuable time to serve as members of code authorities and know of the practical benefits to their businesses derived therefrom; and whereas during the investigation and consideration of the extension of the National Recovery Administration certain members of the United States Senate have publicly condemned the National Recovery Administration as oppressive to small business men, as creating monopolies, as fixing prices, and as implied specifically in the Nye-McCarran resolution that codes were administered unfairly, illegally, and improperly; and whereas the members of this committee appreciate that codes have been administered by human beings and therefore some mistakes have been made yet to the best of their knowledge and belief codes, generally speaking, handicapped by a weak Government enforcement procedure have been fairly and honorably administered, which causes this committee to resent these unfair, unjust, and unsubstantiated blanket criticisms which they know to be untrue in their respective industries in that their codes have not oppressed the little man, nor created monopolies, fixed prices, nor have their codes been administered unfairly, illegally, and improperly and can prove such to be the case before any fair tribunal; and whereas it is an unquestioned fact that codes generally have reduced unemployment, increased the public purchasing power by billions of dollars, shortened the daily hours of workers, eliminated child labor and the sweatshop, increased wages as well as reduced cutthroat competitive practices, and whereas the prolonged investigation of the National Recovery Administration by the United States Senate is creating an atmosphere of uncertainty and unrest in the business world which has and will cost American business millions of dollars: Now, therefore, be it

"*Resolved*, That we the members of the Industry and Business Committee for National Recovery Administration Extension, representing hundreds of thousands of business and industrial units operating in every State, employing millions of workers, respectfully request the Senate Finance Committee to expedite its investigation and report out at the earliest date and best possible legislation obtainable to extend an improved and strengthened National Industrial Recovery Administration."

WARD CHENEY,
Chairman Industry and Business Committee,
For National Recovery Administration Extension.

Senator BARKLEY. I have here a clipping from the New York Times quoting Mayor LaGuardia in connection with a statement made here the other day in connection with the fire hose matter by the purchasing agent of the city of Milwaukee, in which reference was made to a case involving New York, and Mayor LaGuardia has made a statement in the New York Times regretting that the report of the purchasing agent of New York contained the language which it did and setting out the fact that out of 20,000 purchases a month by the city of New York only this one complaint has ever come to his attention. I would like it to be put into the record.

(From the New York Times, Apr. 2, 1935:)

LAGUARDIA DEPLORES CRITICISM OF N. R. A.

Holds ills complained of in Forbes report have been smoothed out

Mayor LaGuardia expressed his regret yesterday over the annual report of Purchase Commissioner Russell Forbes, which said that some N. R. A. codes were "thin disguises for collusion and price fixing."

When the mayor was asked what he thought of the report, he said:

"On the whole, I find it very encouraging, but I fear that Mr. Forbes' bitter dictum on the N. R. A. is open to some misinterpretation."

"The N. R. A. people seem to agree with you", an interviewer remarked.

"Yes; and I regret that exceedingly", the mayor said.

"Mr. Forbes has tried to show some crude instances of collusion, such as those occurring in our purchase of fire hose. But every time he has called these little irritations with the N. R. A. to my attention, the N. R. A. authorities have responded at once and have been most helpful.

"When you consider that we make 20,000 purchases a month, it is only natural that there should be some friction in the beginning. But we have those matters all smoothed out, and we have eliminated the delays that formerly arose when the N. R. A. requested time to investigate bidders on city contracts."

The mayor said there was now the best of cooperation between the city administration and the N. R. A.

Senator GORE. Do you know how many cases have turned upon the constitutional question?

Mr. JANNEY. No; I cannot say, Senator, but I am quite sure that this is true, that a considerable majority of the cases in which the constitutionality of the act has been in issue, the decision has been against constitutionality. I have not the statistics.

Senator GORE. Some cases, I notice, the courts have expressly refused to pass upon the constitutionality and preferred to let it go up to a higher court.

Mr. JANNEY. Yes, sir.

The CHAIRMAN. We will recess now until 2 o'clock, at which time we will proceed with Mr. Janney and then with Mr. Mason. We will meet in the District of Columbia room at the Capitol.

(Whereupon, at 12:05 p. m., a recess was taken until 2 o'clock of the same day.)

(Proposed bill submitted by Mr. Janney is as follows:)

OUTLINE OF ACT PROPOSED TO SUPERSEDE SECTIONS 1 TO 7 OF THE NATIONAL INDUSTRIAL RECOVERY ACT

The following outline is tendered as a starting point for the formulation of an act to supersede sections 1 to 7, inclusive, of the National Industrial Recovery Act.

This outline is not supposed to be finished in form or substance, but it suffices to present, for analysis and criticism, an expression of certain fundamental principles and of a method by which they may be made operative. This draft is based largely upon earlier drafts dated respectively in October and November 1934.

AN ACT To declare policy respecting rights to cooperate, organize, and associate, and obligations to practice fair conduct, which respectively should be conferred and imposed upon parties to industrial and commercial relationships

SECTION 1. *Declarations of policy.*—(*a*) This act supplements and does not repeal nor modify the antitrust laws and the Federal Trade Commission Act, as hereinafter identified. It is the intention of Congress that the antitrust laws, the Federal Trade Commission Act, and the present act be interpreted collectively as the comprehensive declaration by Congress of policy concerning standards of conduct in industry and commerce.

(NOTE.—This subsection is premised upon the beliefs (1) that the policies of the antitrust laws and Federal Trade Commission Act are not inconsistent with the fundamental policies which should be put into operation in an act superseding the National Industrial Recovery Act; and (2) that all participants in industry and commerce may be required to refrain from violating the former while enjoying the benefits of the latter. It should be practicable for industry and commerce to comply with the prohibitions against unreasonable restraints of trade, monopolies, and unfair competition, while availing of the opportunities, under the proposed new act, for all proper organization and cooperation. The antitrust laws and the Federal Trade Commission Act are believed to be salutary as they stand, because they should prevent excesses in the exercise of new privileges.)

(*b*) It is hereby declared to be the policy of Congress to sanction and encourage cooperation, organization, and association among persons participating or attempting to participate in industrial or commercial relationships (as hereinafter defined), provided such cooperation, organization, or association shall be fair and reasonable in method and operation and shall be designed and calculated to serve purposes that are sound socially and economically, and shall not be violative of the policy of any law of the United States, including this act.

(*c*) It is hereby declared to be the policy of Congress to condemn and proscribe, to the full extent to which Congress may do so under the Constitution of the United States, every species of unfair conduct upon the part of any person or persons while participating or attempting to participate in any industrial or commercial relationship.

SEC. 2. *Definitions.*—The terms enumerated in this section shall have the following respective meanings when used in this act:

"Interstate and foreign commerce" means trade or commerce between any two or more of the several States, or between any foreign place and any State or the District of Columbia or any Territory or insular possessions or other place under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia, or within the District of Columbia or any Territory or insular possession or place under the jurisdiction of the United States.

"Person" means any individual, group of individuals, partnership, association, corporation, receiver, or trustee in bankruptcy; and pronouns used in substitution for "person" shall have the same meaning.

"Industrial or commercial relationship" means the relationship between any two or more persons, whether competitive or not, while they respectively are participating or attempting to participate in industry or commerce (1) in any manner, or (2) in any respective capacities, whether as employers or employees or otherwise, or (3) in any branch or phase of production, selling, offering for sale or distribution, or (4) in the offering or rendering of industrial or commercial services.

"Antitrust acts" means sections 1 to 27 inclusive of title 15 of the Code of the Laws of the United States of America (Sherman and Clayton Laws).

"Federal Trade Commission Act" means sections 41 to 51 inclusive of title 15 of the Code of the Laws of the United States of America.

(Secs. 3 to 8, inclusive, are based upon the power of Congress to regulate interstate and foreign commerce.)

SEC. 3. It is hereby declared to be unlawful for any person, while participating or attempting to participate in any industrial or commercial relationship, to commit or attempt or threaten to commit any act of unfair conduct which has caused or is causing or is likely to cause detriment or obstruction to the course or development of interstate or foreign commerce.

SEC. 4. Any willful or malicious violation of section 3 of this act shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and such violation shall be deemed a separate offense for each day on which the violation is committed or continued.

(NOTE.—This corresponds to subsec. (f) of sec. 3 of National Industrial Recovery Act.)

SEC. 5. The Attorney General, in the name of the United States, may institute proceedings in equity to prevent and restrain violations of section 3 of this act, in any district court of the United States having jurisdiction of the party or parties defendant.

SEC. 6. The several district courts of the United States are hereby given original jurisdiction of all suits authorized by this act, at law or in equity, for remedies against violations of section 3 of this act.

SEC. 7. Any person injured in his business or property by reason of any violation of section 3 of this act may sue at law to redress such injury in any district court of the United States in the district in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs and expenses of suit, including a reasonable attorney's fee.

(NOTE.—This corresponds to sec. 15, title 15, U. S. Code, the Sherman law.)

SEC. 8. Any person shall be entitled to sue for and have equitable remedies, in any district court of the United States having jurisdiction of the parties, against continuing or threatened loss or damage by any violation of section 3 of this act;

and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall entitle any person, other than the United States, to sue for injunctive relief against any common carrier subject to the provisions of chapter 1 of title 49, transportation, of the Code of Laws of the United States, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

(NOTE.—Sec. 8 was taken mainly from sec. 26, title 15 of the United States Code, the Clayton Act.)

(Sec. 9, in part, and sec. 10, are intended to invoke Federal power additional to the power to regulate interstate and foreign commerce.)

SEC. 9. *Illustrative species of unfair conduct.*—Without limiting the generality of the declarations in subsection c of section 1 and in section 3 of this act, the following are declared severally to be species of unfair conduct which shall be deemed actionable in any action or suit authorized by any of sections 3 to 8, inclusive, of this act, and in any suit in equity in a court of the United States, between citizens of different States, namely: employment of child labor; unfair or destructive price cutting; offering or giving, directly or indirectly or by any subterfuge or device, any secret discount or rebate or equivalent thereof; violation by any contracting party or by his or its agent, of any agreement for fair and lawful cooperation, organization or association between persons operating industrial or commercial enterprises, or unfair interference with fair and lawful activities under any such agreement, upon the part of any person, or his or its agent, operating any industrial or commercial enterprise, whether or not such person be a party to such agreement; employment of labor or services for unfairly low compensation; exaction of unfairly or unreasonably long hours of labor or service; misrepresentation however uttered as to the quality, construction, ingredients, merits, purposes, or effects of any commodity; deception or fraud however practiced; unfair or coercive interference by any employer, or his or its agents, with the right or freedom of employees to organize and bargain collectively through representatives of their own choosing; interference, restraint or coercion by any employer or his or its agents, against the right or freedom of employees to designate representatives for purposes of organization and collective bargaining, and to organize or otherwise to act in concert for purposes of collective bargaining or other mutual aid or protection; requiring any prospective or actual employee, as a condition of prospective or continued employment, to join any company union or to refrain from joining, organizing or assisting an employees' organization of his own choosing; refusal or neglect or unreasonable delay, after fair notice, upon the part of any employer, to meet and negotiate in good faith with representatives lawfully selected by employees for collective bargaining.

(NOTE.—The enumeration of species of unfair conduct in this sec. 9 is only illustrative and tentative, and may require additions or subtractions; but it is recommended that the catalog be made as complete as practicable so that offenses heretofore considered to be not actionable may be made so now.)

SEC. 10. The several district courts of the United States, in the exercise of equity jurisdiction heretofore conferred upon them by the laws of the United States, are hereby given jurisdiction to try and to decide suits, between citizens of different States, for equitable remedies against persons guilty of actionable unfair conduct, in accordance with the principles of equity and the procedure heretofore followed by the courts in cases arising between private litigants under the so-called "law of unfair competition."

(NOTE.—This is intended to induce the courts to recognize as actionable, new offenses which the natural evolution of the law of unfair competition has not yet overtaken. It is thought that the existing jurisdiction of the district courts to try suits between persons of diverse citizenship, should open the way for the restraint of unfair conduct in a wide field, even though such conduct does not necessarily involve interstate or foreign commerce.)

SEC. 11. Any suit authorized by section 8 or by section 10 of this act may be brought and prosecuted in the name or in behalf of a person or persons entitled to sue, by a duly designated representative which is a legal entity, such as an incorporated or otherwise legally organized industrial or commercial association or association of employers or of employees empowered to act and acting in the

interest of its members including such a person or persons entitled to sue. A duly designated representative, empowered and acting as aforesaid, shall be deemed to be a proper party, in its own name, to bring and prosecute such suit for the benefit of the persons represented by it whether or not any such person be joined as a party.

(NOTE.—This section 11 follows the theory announced by the Supreme Court in the *Associated Press case* (248 U. S. 215; 39 S. C. 68, 70). It seems desirable to permit litigation to be controlled by code authorities and other representative associations, so that they may pursue uniform enforcement policies, may wisely select test suits to be brought or defended, and may minimize the need for litigation.)

SEC. 12. In any suit authorized by section 8 or by section 10 of this act, each defendant adjudged guilty of actionable unfair conduct shall be liable:

(a) To an injunction against such unfair conduct.

(b) To pay to the plaintiff or plaintiffs the amount of actual damages which he or they has or have suffered by reason of said unfair conduct; and if a plaintiff be suing in a representative capacity (as provided in sec. 11 of this act), the court may ascertain actual damages by reference to the aggregate of damages suffered by individual persons represented by said plaintiff. The court, in its discretion, may decree the payment of damages in any sum, which the court may deem just, above the amount of said actual damages, but not exceeding three times the amount thereof (which limitation, however, shall not apply to damages which may be awarded under the following subsection (c)).

(c) To pay to the plaintiff or plaintiffs, in lieu of damages mentioned in the foregoing subsection (b), such damages as the court may deem just, and in assessing such damages, the court, in its discretion, may adopt such definition of liquidated damages as may appear in a code (approved as provided in sec. 14 of this act) which is pertinent to the relationship of the parties to the suit, or as may appear in any pertinent agreement to which the defendant is a party; or the court, in its discretion, may decree the payment, as damages and not penalties, of an amount of money computed by (1) multiplying a base rate of not less than $10 and not more than $500, by the number of days on which said defendant is found to have committed or continued the adjudged unfair conduct, and (2) multiplying the product so obtained by the number of plaintiffs and persons by them represented (as provided in sec. 11 of this act) who appear to the court to have suffered damage by reason of said unfair conduct.

(d) To pay to the plaintiff or plaintiffs all the profits made by such defendant as the actual or probable result of or in the course of committing the adjudged unfair conduct; and in proving profits the plaintiff or plaintiffs shall be required to prove gross income only and the defendant shall be required to prove every element of cost and deduction which he claims.

(e) To make, upon appropriate order of the court, full disclosure, by books, records, and other evidence and the oral testimony of officers, agents, and employees, of all particulars of defendant's business and conduct deemed by the court to be material to the ascertainment of liability for damages or profits or both.

(f) To reimburse plaintiff or plaintiffs, if the court so order in its discretion, for all reasonable expenses incurred in such suit including fees and expenses of attorneys and counsel.

(g) The court may order and enforce the distribution of damages or profits or both among plaintiffs and persons by them represented, in proportions which the court may deem just; or the court may leave such distribution to be performed by a plaintiff or plaintiffs with or without regulation by the court.

SEC. 13. In any suit between private litigants, authorized under section 8 or section 10 of this act, the United States shall be entitled to intervene and to become, at its election, a party plaintiff or defendant, for the purpose of representing the interests of the people of the United States in respect to the issues of such suit. It shall be the duty of the Attorney General, under the direction of the President, to petition for leave to intervene in such of said suits as the President may designate in his discretion; and every such petition shall be granted by the court, as of course, if it contain an allegation, verified by the Attorney General or an Assistant Attorney General, to the effect that the circumstances of the suit require, in the opinion of the person so verifying, the intervention of the United States. Upon such intervention, the United States shall become forthwith a nominal and actual party to the suit.

(NOTE.—Since the executive branch of the Government would be relieved, under this act, of the major burden of enforcement, it should be practicable

to create a bureau in the Department of Justice, headed by an Assistant Attorney General, which would have the duty of scrutinizing pertinent suits between private litigants, and of starting prosecutions under sections 4 or 5 and intervening under section 13. This would permit the work to be done by a specially qualified staff, which would seem preferable to the delegation of the work to the Federal district attorneys. The volume of litigation in which the Government would have to engage should not be so great as to require a numerous staff. At the same time, the Government would be represented by carefully chosen counsel who should be enabled to concentrate exclusively in the particular field of this act.)

SEC. 14. *Codes of fair conduct.*—Upon application to the Federal Fair Practices Board (hereinafter described, and referred to as "the Board"), by any group or association of persons participating or attempting to participate in any industrial or commercial relationship, the Board may approve a code of fair conduct defining standards of fairness, tests of unfairness, obligations and rights pertinent to the applicant group or association and its industrial and commercial relationships: *Provided*, That the Board first find (a) that the applicant group or association imposes no inequitable restrictions upon admission to membership therein or upon the right and opportunity of members to be heard and to take part in governing and expressing the will of such group or association, (b) that the applicant group or association is truly representative of a consensus of considered opinion upon the part of at least a majority in number of the persons purported to be represented by the applicant group or association, (c) that the proposed code is not designed nor calculated to inspire or promote violations of the antitrust laws or of the Federal Trade Commission Act, (d) that such code forbids the species of unfair conduct enumerated in section 9 of this act, and specifies minimum wages and maximum hours of work, for employees, to be maintained under the code (e) that such code is designed and calculated to aid in effectuating the policy of this act, and (f) that such code is a fair and reasonable expression of sound public policy, and is fair and reasonable in its probable effects upon others not represented by the applicant group or association. Such codes shall be subject to amendment, cancelation, or replacement by substitute codes, with the approval of the Board as aforesaid.

SEC. 15. When any code of fair conduct shall have been approved by the Board as provided in section 14 of this act, then in any action or suit authorized by any of sections 3 to 8, inclusive, of this act, and in any suit in equity in a court of the United States, between citizens of different States, such code shall be prima facie evidence that the provisions thereof are valid expressions of sound public policy, that transgressions against such policy are actionable, and that conduct expressly sanctioned by such code is not violative of the antitrust laws or the Federal Trade Commission Act.

(NOTE.—The purpose here is to give the codes the status of evidence which the courts must weigh, instead of the status (as under National Industrial Recovery Act) of rules which are supposed to be binding upon the courts. In the latter status, the codes are thought to be too rigid in their effects, e. g., in that the courts would seem powerless to relieve oppressed minorities against code provisions which may have been imposed upon them unfairly by dominant majorities without detection by representatives of the President. If the codes were evidence only, as proposed in above section 15, the courts would be at liberty to apply tests of fairness and to vindicate or invalidate code provisions.

The prima facie effect of a code should extend not only to the upholding of the code provisions, but also to the presumption that the antitrust laws and the Federal Trade Commission Act will not be violated by conduct expressly approved by the code. This prima facie effect would be rebuttable upon proper evidence, allowing for free judicial disposal of all pertinent issues, and enabling the courts to enforce the existing acts mentioned while permitting all reasonable latitude under the proposed new act.)

SEC. 16. Codes of fair conduct approvable by the Board as provided in section 14 of this act may be in the form of declarations of policy duly and fairly authorized by at least a majority in number of the persons intended to be primarily affected thereby; or in the form of agreements entered into by the persons to be bound thereby; including, but without limitation thereto, agreements between employers and employees, or between competitors, or between producers and distributors, or between persons having other industrial or commercial relationships.

SEC. 17. Any code approvable by the Board as provided in section 14 of this act may declare fair and reasonable policy respecting any one or more of the subjects enumerated in this section, namely:

(a) Maintenance of reasonable balance between production and consumption of any commodity;

(b) Prohibition of sales by any person at less than actual cost to him, ascertained by fair methods of accounting, subject, if desired, to defined fair and reasonable exceptions allowing legitimate disposal at less than such cost of dead stock, distress merchandise, and the like;

(c) Establishment and maintenance of prices at levels which shall be fair and reasonable to purchasers and shall aid in avoiding unreasonable depletion or destruction of capital assets devoted to the production or marketing of commodities to be sold at such prices;

(d) Conservation of natural resources for the purpose of rendering secure a fair and reasonable opportunity for economical and sustained utilization thereof;

(e) Provision for uniform use of fair and reasonable methods of accounting;

(f) Promulgation of rules of fair, reasonable, and uniform usage in grading, and in branding, labeling, or otherwise marking commodities, to identify or to differentiate between grades, qualities, quantities, or dimensions of commodities;

(g) Classification, in fair and reasonable categories, of producers, distributors, and marketers according to the respective economic functions which they should perform; and definition of the rights and obligations which should appertain to those classified in each category, among themselves, and in relation to those in other such categories;

(h) Arbitration of controversies arising among those affected by the code;

(i) Definition of liquidated damages for violation of code provisions or breach of agreement or other unfair conduct.

(j) Assessments of money, for use in paying costs and expenses of administering the code and procuring compliance therewith, in fair proportions, against persons included in the industrial or commercial group or association the majority of which was represented by the applicants for the code.

Nothing contained in this section 16 or its subsections shall be construed to place any limitation upon the rights to declare policy in codes as elsewhere authorized in this act.

(NOTE.—The purpose of this section is to announce congressional approval of numerous objectives of organization and cooperation which heretofore the courts have been unwilling to sanction in the absence of appropriate legislation. The enumeration should include a sufficient number of subjects to apprise the courts, directly or by analogy, of the intended scope of congressional policy. In view of section 15, above, all action taken under this section 17 will be subject to control by the courts.)

SEC. 18. When a code of fair conduct shall have been approved by the Board as provided in section 14 of this act, any conduct expressly sanctioned in such code shall be presumed to be lawful until it shall have been adjudged to be unlawful by a court of competent jurisdiction upon final decree or judgment, after appeal or prosecution of writ or error, if any. Any person who has complied with said code, and has practiced such expressly sanctioned conduct within the period following approval of the code and preceding such adjudication, shall be exonerated from any intent to commit, by such conduct within said period, any misdemeanor under the antitrust laws; and to the extent of said conduct within said period said party shall be exempt from criminal prosecution and from penalties and forfeitures under the antitrust laws and from liability for threefold damages under section 15, title 15, of the Code of the Laws of the United States. The exoneration and exemption aforesaid shall apply also in respect to such conduct continued within 90 days next following the date of such adjudication, provided that any party seeking to avail of such exoneration or exemption shall be reasonably diligent during said 90 days in reforming his conduct consistently with said adjudication. Nothing contained in this section shall be construed to exonerate or exempt any person in respect to conduct not expressly sanctioned by a code with which such person has continuously complied, or to exempt any person from liability in equity.

SEC. 19. When any code of fair conduct has been approved by the Board under section 14 of this act, if such code provide for assessments of money under subsection (j) of section 17 of this act, and if any consequently obligated person refuse or fail to pay any such assessment when fairly and reasonably due to be paid, then such refusal or failure shall be prima facie evidence that the offending person

so refusing or failing to pay has been guilty of actionable unfair conduct to the injury and damage of the persons having administrative authority over such code; and said persons having such administrative authority, or their successors in office, shall be entitled to sue such offending person, if the parties be citizens of different States, in any district court of the United States having jurisdiction of the offending person and to recover, as liquidated damages for unfair conduct, twice the amount of said assessment which the offending party has refused or failed to pay, and also the expenses and costs of such suit including reasonable fees and expenses of attorneys and counsel. Nothing contained in this section shall be construed to place any limitation upon rights to sue as elsewhere authorized in this act.

SEC. 20. *Federal Fair Practices Board.*—(a) There is hereby created as an independent agency in the executive branch of the Government a Board to be known as the "Federal Fair Practices Board" (herein referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President by and with the advice and consent of the Senate. The original members shall be appointed for respective terms of 1, 3, and 5 years, and their successors shall be appointed for 5 years each, except that anyone chosen to fill a vacancy shall be appointed for only the unexpired term of the vacating member. The President shall designate one member to be chairman of the board. Not more than two members shall be of the same political party. The members shall not engage in any other business, vocation, or employment. Any member may be removed by the President for inefficiency, neglect of duty or malfeasance in office. A vacancy in the Board shall not impair the right of the remaining members to exercise the powers of the Board. The Board shall have an official seal which shall be judicially noticed.

(b) The members of the Board shall receive each a salary of $10,000 per year. The Board shall appoint, and determine the salary of, a secretary. The Board shall have authority to employ and fix the compensation of such clerks, special experts, counsel, and others as from time to time may be found necessary and may be appropriated for by Congress. Excepting the secretary of the Board, two clerks for each member, the counsel and such special experts as the Board may employ from time to time, all employees of the Board shall be in the classified civil service and shall enter therein under the rules and regulations of the Civil Service Commission.

(c) Expenses of the Board, including those for transportation, subsistence, and lodging incurred by members, or employees under their orders, upon any official business outside the city of Washington, shall be allowed and paid on presentation of itemized vouchers therefor approved by the Board.

(d) The President is authorized to assign offices for the use of the Board.

(e) The main office of the Board shall be in the city of Washington, but it may meet and perform its functions elsewhere. The Board, by one or more members or designated examiners, may prosecute anywhere within the United States, any inquiries necessary to its duties.

(f) The Board is authorized and directed to perform the following duties: (1) To receive and consider all applications for the approval of codes, to make the findings enumerated in section 14, to conduct hearings and receive evidence and arguments pertinent to such findings, and to approve or disapprove codes for which application has been made; (2) to promulgate approved codes, which thereupon shall have the prima-facie effects defined in section 15; (3) to review codes previously approved and, upon due notice to the original applicants and other persons intended to be directly affected, and after affording opportunity for all said persons to be heard, to require revision of any or all code provisions as a condition of continued approval by the Board and of continuation of said prima-facie effects; (4) to compare respective codes, before or after approval, and to require, as a condition or original or continued approval, that the provisions of different codes shall be reasonably coordinated and compatible, and calculated to avoid unfairness as between different industrial, commercial, employer, and employee groups, and to avoid unfairness to consumers and the general public; (5) to recommend to the Attorney General prosecutions under any or all of sections 3, 4, or 5, and intervention under section 13; (6) to cooperate with the Attorney General or any designated Assistant Attorney General in the preparation for and conduct of such prosecution or intervention; and (7) to make and promulgate rules and regulations to govern activities of and proceedings before the Board.

SEC. 21. *Limited compulsory codes.*—If any industrial or commercial group shall have failed or neglected to procure approval by the Board of a code forbidding the employment of child labor and specifying minimum wages and maximum

hours of work for employees, then it shall be the duty of the Board to give notice (which shall be timely and shall state the intention of the Board to conduct hearings and the purposes of the hearings) to all persons of such group whose names and addresses are known to the Board; and within reasonable time after such notice, the Board shall give opportunity for the hearing of, and the presentation of evidence by, all persons intended to be directly affected by proposed action of the Board; and following such hearing and upon consideration of all relevant evidence presented thereat, the Board shall be entitled, and it is hereby empowered, to formulate and promulgate a code, limited in its provisions to the forbidding of employment of child labor and the specifying of minimum wages and maximum hours of work for employees, which code thereupon shall be deemed to be a code for said industrial or commercial group approved under the provisions of section 14, and said code shall be prima facie evidence that the provisions thereof are valid expressions of sound public policy and that transgressions against such policy are actionable.

(NOTE.—The present writer is not qualified to formulate complete provisions respecting the proposed Board, its duties, and functions; hence does not presume to suppose that above sections 20 and 21 should be advocated in their precise forms.)

SEC. 22. The President is authorized to designate, or to appoint specially for the purpose, an Assistant Attorney General who shall serve as consultant to the Board and shall establish and maintain cooperation between the Department of Justice and the Board, and shall represent the Government, subject to the direction of the President and the Attorney General, in all proceedings in behalf of the United States authorized under this act.

SEC. 23. If any provision of this act or the application thereof to any person or circumstance be held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected by such holding of invalidity.

SEC. 24. Congress, by joint resolution, hereby declares ended the emergency recognized by section 1, title I, of the National Industrial Recovery Act, approved June 16, 1933; and accordingly sections 1 to 7, inclusive, with the subsections thereof, of said National Industrial Recovery Act, are hereby repealed.

(NOTE.—In the foregoing outline, no attempt has been made to deal with the application of the Agricultural Adjustment Act or with oil regulation or with public works and construction projects dealt with in the National Industrial Recovery Act.)

AFTER RECESS

(The hearing was resumed at 2 p. m. at the District of Columbia Committee room, at the Capitol.)

STATEMENT OF L. A. JANNEY—Resumed

(The witness had been previously duly sworn.)

The CHAIRMAN. Mr. Janney, you may proceed.

Mr. JANNEY. Mr. Chairman, for the sake of the record, I should say that during the recess I was told that I had been mistaken in supposing that the majority of the Federal district courts' decisions in which the constitutionality of the act had been in issue, had decided against the constitutionality.

I think I explained that I had no statistics on that subject, and that it was my supposition that the majority had gone against the constitutionality of the act.

If I am wrong in that, I will be glad to be corrected.

The CHAIRMAN. I so understood you.

Senator BLACK. That would not be much indication of what the Supreme Court was going to do anyway, would it?

Mr. JANNEY. No, certainly; and it does not affect my conviction.

Mr. BLACK. No; it is not any indication of what the Supreme Court will do.

Mr. JANNEY. I had just said that in dealing with codes in my opinion Congress should invoke the collaboration of the Federal court.

Congress may allow a generous latitude in the formulation of codes, if it will enable the Federal courts to interpret and apply the will of Congress according to its expressed declarations, instead of trying to require the courts to be bound by legislation emanating from business and the executives.

If the legislative and judicial functions are allocated, as I suggest, to their traditional places in our governmental scheme, there will still remain tasks of tremendous importance to be performed by the executive branch.

Codes can be made very valuable, if codes for respective groups are coordinated, and if their provisions, instead of being rigidly binding, are of sufficiently flexible effect to permit sound experimentation toward the development, and eventual enforcement, of rules of business conduct.

An appropriate executive agency, of qualified personnel, can administer a laboratory, so to speak, in which to test what I have called the "conditional regulations", until their soundness and utility have been demonstrated sufficiently to warrant their being classed with the "approved regulations".

In the meantime, these untried regulations cannot be employed as bludgeons for "cracking down" upon righteous dissenters, without giving the latter full opportunity to defend themselves, and to demonstrate that the "conditional regulations" which they have transgressed should not be judicially approved.

At the same time, if the conditional regulations were judicially approved, they would become enforceable.

The executive agencies can be beneficially occupied with all of the incidents of devising and testing code provisions, in reconciling differences of opinion, in conciliating conflicting interests, and in attempting to procure voluntary compliance with both the "approved regulations" declared by Congress, and with the "conditional regulations" expressed in the codes.

In these ways, the executive agencies might make an invaluable contribution to a process of evolution toward an ultimate, sound codification of rules of fair conduct.

The courts would make their essential contribution to this evolution, just as they have been doing for generations under other statutes, and in the jurisprudence of so-called "unfair competition".

As the executives move forward, step by step, in the approval of maturely considered rules, the courts may be relied upon to stabilize and fortify those rules when, upon all the available evidence, the rules are found to be sound.

From time to time, Congress may see fit to transfer into the class of "approved regulations", to be adopted and declared as congressional policy, rules which previously had been in the conditional class, with or without judicial approval.

The process I thus propose has the merit, I believe, of reasonable deliberateness, such that progress may be made with certainty, by dependably beneficial increments, and with minimum tendency toward confusion and misgivings among those who are to be regulated.

I contrast such a program with the attempt that has been made under the National Recovery Administration to accomplish too much all at once: to apply to business a multitude of restraining strait-jackets, where indeed they have been greatly needed, but without first ascertaining whether they will fit, or can be made to fit, the intended wearers.

The economic and social purposes we have in mind, and the adaptation of business habits to those purposes, are of too grave consequence to this country to be dealt with in any summary fashion. The administration of the National Recovery Administration, it seems to me, has undertaken to bring about a revolution in the national attitude toward conditions which can be remedied, practically and efficiently, only by evolution, aided by the persistent and industrious efforts of all the factors of Government, industry, commerce, and labor, each doing its part.

Although I recommend the evolutionary process, I would ask that it be accelerated so far as is reasonably possible, consistently with sure progress. That is why I would ask Congress to declare a catalog of prohibited species of unfair conduct, in unmistakable terms, so that the courts may be enabled to fall in step, and promote the advance toward a stable jurisprudence as speedily as may be.

If this had been done a year and a half ago, we would have, by this time, a considerable body of law affirmed by the courts for the guidance of business, instead of facing a number of decisions holding that N. R. A. is wrongly constructed and cannot be enforced. We would enjoy some degree of certainty, instead of being in the midst of confusion.

Besides, the important duties of the executive agencies which I have already referred to, they should be empowered, obviously, to sue in the Federal courts, in the name of the United States, to enforce the approved regulations declared by Congress, and to offer for adjudication the conditional regulations expressed in the codes.

If Congress so declare, the executives may be enabled to prosecute violations in the criminal courts, or to seek injunctive remedies in the equity courts. I am not inclined to favor criminal penalties for transgressions that are so largely of a civil nature; but that is simply one of the large aggregate of matters that Congress will decide.

In addition to the right of the Government to sue for violations of the statute and the codes, I would also ask Congress to authorize suits by private individuals or organizations, when they, or their members, have been injured or threatened with injury by the prohibited kinds of unfair conduct—that is, those kinds prohibited in the words of Congress itself.

This right of private suit exists under the antitrust laws, and in some instances under the Interstate Commerce Commission law. It has always existed in the Federal courts, under the law of unfair competition. It exists under the trade mark, patent, and copyright laws, all of which are intended to protect against unfair business conduct.

I can see no valid reason for refusing the right of private suit against new kinds of unfair conduct. On the contrary, there are several reasons, which seem to me of controlling importance, in favor of it.

All regulatory measures of the kind must have a double aspect. Theoretically the prohibited conduct is against the general public welfare, but particularly it is felt with maximum effect by private individuals or business or labor units. So many cases arise in which a business unit finds itself in a dire emergency because of unfair conduct, and I think that business should have an opportunity to go into a Federal court to seek its remedy, and I think there can be no question but that the Federal courts can be trusted to deal with that sort of situation under their equity jurisdiction.

I would like, if the committee please, to refer to a chart I have put up here by which I want to illustrate some of the analogies that I invoke in support of my argument.

(See fig. 1 for illustrative chart referred to above.)

Mr. JANNEY. In the first place, at the left-hand extremity of the chart, you have the Constitution, and under that is Congress. Congress has power to regulate commerce with foreign nations and among the several States.

In the exercise of that power, Congress has already declared in antitrust laws that unreasonable restraints, monopolies, and so forth, are unlawful. Under that statute the Government may enforce, through the Department of Justice, or, in some instances, through executive commissions; also private litigants may sue in the Federal law courts for treble damages; private litigants may sue in the Federal equity courts, and the courts must decide what are unreasonable restraints, monopolies, and so forth.

The pink blocks on this chart illustrate what Congress may do, by analogy to what it has already done.

Congress may prohibit unfair conduct in interstate and foreign commerce; may authorize enforcement proceedings by the Government; and the Government agency for enforcement may be the Department of Justice or the Federal Trade Commission.

I advocate as earnestly as I can that Congress authorize litigation, private litigation, in Federal courts, at law or in equity, and in the end the courts must decide the issue, whether the conduct is fair or unfair.

Senator BLACK. Do you mean the courts decide whether it is fair or unfair without any congressional definition of what constitutes an unfair practice or a fair practice?

Mr. JANNEY. No; not at all.

The CHAIRMAN. Getting back to the first pink block, would you write into the law what is unfair conduct?

Mr. JANNEY. I would have Congress go as far as it is willing to permit itself, to declare that A, B, C, and D are species of unfair practice.

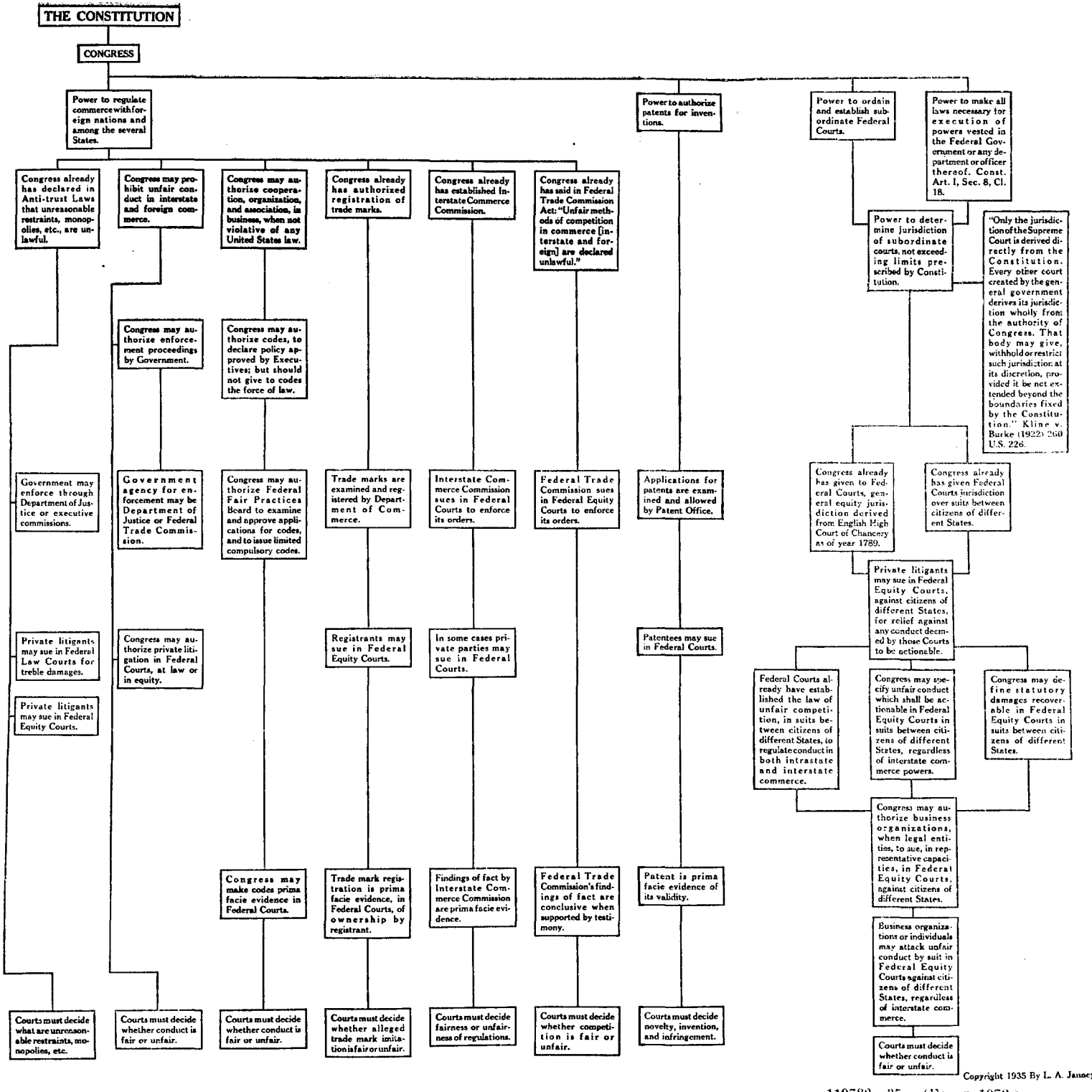
The CHAIRMAN. Does your bill have that?

Mr. JANNEY. Yes; it does.

The CHAIRMAN. Let us see what it says.

Mr. JANNEY. May I trouble you to turn to page 4, section 9, entitled: "Illustrative Species of Unfair Conduct"?

I would like to have the committee understand that I do not believe myself that the drafting of a section of this kind is a one-man job. I certainly cannot lay claim to wisdom enough on the first trial to formulate a section of that kind that would be perfect, but I am illustrating the general principle.



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I have already said earlier that Congress may prohibit all kinds of unfair conduct in interstate commerce.

Then, section 9 reads as follows:

Without limiting the generality of the declarations in subsection c of section 1 and in section 3 of this act, the following are declared severally to be species of unfair conduct which shall be deemed actionable in any action or suit authorized by any of sections 3 to 8, inclusive, of this act, and in any suit in equity in a court of the United States, between citizens of different States, namely: Employment of child labor; unfair or destructive price-cutting—

Senator BLACK. What does that mean?

Mr. JANNEY. I do not know, Senator.

Senator BLACK. Do you believe in that?

Mr. JANNEY. If it is unfair, or if it is destructive, yes; but I do not pretend to be an economist, and I am putting that in there to raise the question whether that is a good thing to have in the bill. If it is, I am for it, and if it is not a good thing economically, I am not for it.

Senator BARKLEY. What is your opinion about whether it is a good thing or not?

Mr. JANNEY. I question it very much.

Senator BLACK. If we are going to have a provision against a person selling too cheaply, then we should have a provision against selling too high. Do you think that is correct?

Mr. JANNEY. I think so.

Senator BLACK. Have you anything like that in your proposal?

Mr. JANNEY. No; because I want to make it clear this section is supposed to be legislation of general principles, and I expect to have it kicked into 40 pieces.

Senator BLACK. As a matter of fact, do you believe in a competitive system or not?

Mr. JANNEY. I do believe in a competitive system with a floor under it.

Senator BLACK. What kind of a floor?

Mr. JANNEY. A floor against unfairness.

Senator BLACK. Of course, the whole theory of a competitive system is, if one man wants to and can sell cheaper than another, he can do it.

Mr. JANNEY. Yes; but I think a sound view of the competitive system does not rest upon the capacity of a man to do things unfairly—to cheat.

Senator BLACK. To cheat, certainly.

Mr. JANNEY. I certainly think the sound view of the competitive system does not require a man to submit to competition which is based upon slave driving or very low wages.

Senator BLACK. Yes; of course we can put that in, but that does not refer to unfair destructive price-cutting. We could pass legislation which legalized minimum wages and could pass legislation which legalized maximum hours, but why should we pass any kind of legislation which puts a floor on the prices below which a man cannot sell, under this system, unless we at the same time put in a ceiling beyond which he cannot go on those prices.

Mr. JANNEY. I certainly think there should be a ceiling just as in the antitrust laws, which is one ceiling. I would not advocate any price regulation for two reasons. I am not at all sure whether it is sound legally, and I do not know whether it is sound economically.

Senator BLACK. As a lawyer, let us assume Congress should pass a law or continue a law which gives somebody a right to determine that a man shall be a law violator and sent to jail if he sells too cheap. Now, in the interest of the public, is it fair to pass such a law unless we go still further and limit profits and limit the dissipation of profits by unfair bonuses and unfair salaries?

In other words, is it fair to the public to say we will protect you from having goods sold too cheap, but we will not protect you from having goods sold too high?

Mr. JANNEY. I think, if my knowledge of economics will permit an opinion, that the public will take care of itself very largely against prices that are too high.

Senator BLACK. How can they take care of themselves against prices that are too high? If they do not buy, the output will be reduced, and a scarcity created.

Mr. JANNEY. One thing I have in mind in feeling that some sort of price regulation may be fair—and I am not advocating it because it is beyond my province—is that price-cutting so often results in the surreptitious degrading of merchandise quality. I have seen that happen in my own experience, so that the public, seeing the price differential of merchandise and the merchandise looking the same, buys the very cheap one when it is so skimped in quality that the public is not getting as good a value at the low price as it would have got by paying the higher price.

That is something very difficult to deal with, and I think the economists should get busy and try to solve it.

Senator BLACK. If we are going to try to protect the consumer on that and say these men cannot sell unless they sell at this price, and not sell at any price cheaper than this, your experience has shown that some people have made extortionate profits and exploited the public.

Mr. JANNEY. Of course.

Senator BLACK. Is it fair to limit the floor so you can not sell too cheap, and at the same time make no effort in the law to protect against high prices and high profits?

Mr. JANNEY. Answering that as an academic question, I would say it is not fair to do one unless you do both.

Senator BLACK. If we are not going to have a competitive system and are going to keep the public from getting the benefit of the cheapest goods it can buy, why should we not have imposed upon us the responsibility of protecting them from goods at too high prices?

Mr. JANNEY. I have not the ability to venture any discussion on that question.

Senator BLACK. You are a consumer?

Mr. JANNEY. I am.

Senator BLACK. If a court stepped in and tells a clothing manufacturer or a clothing merchant that he shall not sell you a suit of clothes for less than $30 and you have got to pay $50 for that suit of clothes, would you want, at the same time, to permit them to make 50 percent or 100 percent on that suit of clothes?

Mr. JANNEY. Not if I can help it.

Senator BLACK. Then if they prevent you from buying as cheaply as you can get it, you would not want them to have that profit?

Mr. JANNEY. That is correct.

Senator BLACK. That is the whole theory of the competitive system?

Mr. JANNEY. Yes, but, as I say, I cannot advocate that sort of provision, because I do not know enough about it.

Senator BLACK. You do not advocate this one here, either?

Mr. JANNEY. No; I say frankly I do not. I am neither for it nor against it, because it is beyond my field, and I have set up a catalog here that is intended to be, as I say, in its nature, purely tentative. I am setting up a legal basis with the idea that this committee is going to be advised by its economists whether the things I have suggested are sound or not.

Senator BLACK. Let me ask you one further hypothetical case. The steel code has a provision as to certain prices after they are published; if anybody sells any steel at less than the published prices, they are fined $10 a ton. Would you think it fair for that to continue to be the law if any of those steel companies are going to pay a million-dollar bonus in 1 year?

Mr. JANNEY. I would say then it certainly is not.

Senator BLACK. It would be better for the public if we are going to permit any so-called "stabilization of prices" to require that the profit is not dissipated anywhere else.

Mr. JANNEY. Yes; unless competition is enough to keep the prices from going unreasonably high, and, as to that, I do not know.

Senator BLACK. Of course, if the prices are fixed at a floor below which they cannot go, they will certainly be higher.

Mr. JANNEY. The floor of the prices is fixed, but will normal competition above that floor keep the prices from going too high? That I do not know.

Senator BLACK. Certainly competition could work unobstructed, and unhampered, if it did not have that floor.

Mr. JANNEY. Yes; and with disastrous results to everybody concerned, I think.

Senator BLACK. However, it worked for 150 years in this country, and worked for 2,000 years in many countries of the world.

Mr. JANNEY. Yes; with the consumer getting the worst of it a very large part of the time, in my opinion.

Senator BLACK. On account of low prices?

Mr. JANNEY. On account of low prices and cutthroat competition.

Senator BLACK. Then the competitive system is bad, is it not?

Mr. JANNEY. When you consider the low levels of the competitive system, yes.

Senator BLACK. In other words, in your judgment, to make a competitive system work, the Government must permit those who manufacture goods, or must provide in some way that they cannot sell below a particular price, and it would take a thousand accountants easily a year to go over the steel corporations' books to ascertain whether or not they are actually losing money.

Mr. JANNEY. Yes; I think so, and that is one of the reasons I am not advocating that Congress declare in favor of price-fixing.

Senator BARKLEY. Did you appear before the Banking Committee a year or so ago, in connection with silver?

Mr. JANNEY. No, sir; that is a third cousin of mine.

Senator BARKLEY. That is far enough removed.

The CHAIRMAN. You may proceed, Mr. Janney.

Mr. JANNEY. Now, following out this chart, I have just been over these pink blocks here, with the suggestion that Congress exercise, to the fullest possible extent, its power over interstate commerce by forbidding unfair conduct in interstate and foreign commerce, and the suggestion that Congress authorize private litigation in the Federal courts.

Eventually, the courts must decide whether the conduct is fair or unfair, exactly as the courts must decide at the present time under the Federal Trade Commission Act.

Then, with reference to the codes, in this third column here, Congress may authorize cooperation, organization, and association in business, when not violative of any United States law.

Congress may authorize codes, to declare policy approved by executives, but should not give to codes the force of law.

Congress may authorize a Federal Fair Practices Board, to examine and approve applications for codes, and to issue limited compulsory codes. In that, I have adopted the phrase "Federal Fair Practices Board" simply as a name for some executive agency to examine and approve applications for codes and to issue limited compulsory codes with reference to wages and hours of work, if Congress wants to do that.

Even those codes, which I have referred to as compulsory to distinguish them, should be only prima facie evidence, and eventually the courts must decide what is fair and what is unfair.

Now I have listed here some analogies, with the idea of showing the committee that I have not proposed anything that is radical, but, on the contrary, I am asking that we go back to traditional methods of dealing with these subjects.

For instance, Congress has already authorized the registration of trade marks—and, by the way, all of these things I will refer to relate in one way or another to the regulation of trade conduct, and they are intended to control business relationships against unfairness.

Under the Trade Mark Act, the trade marks are examined and registered by the Department of Commerce, an executive agency which corresponds with the Department of Justice and the Federal Trade Commission, and corresponds with what, for a better name, I refer to as the Federal Fair Practices Board.

These registrants under the trade-mark law may sue in the Federal equity courts, and the trade-mark registration is prima facie evidence in the Federal courts of ownership, and when we get into the court, the court must decide whether alleged trade-mark imitations are fair or unfair.

We have the same character of issues running through all of these, and in all of these instances we have left it to the Federal courts to decide issues of that character.

Congress has already established the Interstate Commerce Commission, and the Interstate Commerce Commission sues in the Federal court to enforce its orders, and in some cases private parties may sue in the Federal courts under orders issued by the Interstate Commerce Commission. In these suits, the findings of fact of the commission are prima facie evidence, and eventually the courts have to decide the issues there.

Congress already has said, in the Federal Trade Commission Act, that unfair methods of competition in commerce, interstate and

foreign, are declared unlawful. The Federal Trade Commission sues in the Federal equity courts to enforce its orders.

There is no right, under the Federal Trade Commission Act, for a suit by private individuals, although in some of the instances of unfair conduct dealt with by the Federal Trade Commission the courts have recognized private rights of action.

Now, issuing from an entirely different constitutional power which Congress has, by way of illustration, is the patent statute. This patent statute has nothing in the world to do with the power to regulate interstate commerce. The power to authorize the issuance of patents is derived directly from the Constitution as a separate and distinct power.

Under that statute, applications for patents are examined and allowed, and the patent issued through another executive agency. When that executive agency has performed its true and proper executive function, then the result of the performance of those functions becomes prima facie evidence in court. The patent itself is prima facie evidence of its validity, and that prima facie evidence has grown out of the performance of the executive functions, but it is not binding upon anybody, and is subject to judicial approval. Then the courts must decide the validity or invalidity of the patent, on issues of novelty and invention, and must decide upon infringement, which are the same character of issues involved in these other cases, and, as I said, that is all traditional procedure.

There is still another power which Congress has derived from the Constitution, and that is the power to ordain and establish subordinate Federal courts. That, of course, is wholly separate from the interstate commerce powers or any other powers of Congress.

Congress has the power to make all laws necessary for the execution of powers vested in the Federal Government, or any department or officer thereof.

Growing out of both of those, Congress has the power to determine the jurisdiction of subordinate courts, not exceeding limits prescribed by the Constitution.

As one illustration of interpretation by the Supreme Court of this right to determine jurisdiction, I have quoted from the case of *Kline* v. *Burke*, 1922 (260 U. S. 226). In that case the Supreme Court said:

> Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution.

Congress has already given to the Federal courts general equity jurisdiction derived from the English High Court of Chancery as of the year 1789. The Supreme Court has decided repeatedly that is the source of the equity jurisdiction of the Federal courts.

State laws have no influence upon the Federal equity jurisdiction. It makes no difference whether a State has an equity system of its own. Federal jurisdiction is uniform throughout the United States, and stands on its own feet.

Congress already has given to the Federal courts jurisdiction over suits between citizens of different States, that specific power having been conferred directly and explicitly by the Constitution.

By reason of these powers I have just referred to, conferred upon the Federal courts by Congress, private litigants may now sue in Federal equity courts against citizens of different States for relief against any conduct deemed by those courts to be actionable. There are only these limitations, that the court in which the suit is brought must have jurisdiction over the defendant, the amount in controversy must be $3,000 or more exclusive of interest and costs, and equity jurisdiction will attach only if there is no complete and adequate remedy at law, the old familiar reason for invoking equity jurisdiction.

That is so thoroughly settled that there is no longer any possible question about the existence of those powers. Under those powers, Federal courts have already established the law of unfair competition in suits between citizens of different States to regulate the conduct of both intrastate and interstate commerce, and the books are full of decisions in cases in which the issues involved have been only of intrastate commerce without the slightest reference to interstate commerce.

These yellow blocks on this chart involve the only possible suggestion of novelty that I have to make. In the first place, Congress may specify unfair conduct which shall be actionable in Federal equity courts in suits between citizens of different States, regardless of interstate commerce powers. In other words, all of these powers are derived directly from the Constitution and it would make no difference if the Constitution had never given power over interstate commerce. These powers would remain exactly what they are.

Congress may define statutory damages recoverable in Federal equity courts in suits between citizens of different States.

Senator BLACK. May I ask you a question before you proceed further?

Mr. JANNEY. Yes, sir; certainly.

Senator BLACK. From what constitutional provision would Congress derive the authority to set out what would be an unfair practice between two barber shops in the same town in a State?

Mr. JANNEY. Explicitly none. When Congress takes any action as suggested in this particular block on the chart, it says simply that the Federal court shall have jurisdiction to try this kind of conduct, and it remains with the Federal court to decide whether this conduct is inequitable or not?

Senator BLACK. Suppose it decided it was inequitable, but it related to some conduct or relationship between parties, which relationship did not spring from any power given in the Constitution.

Mr. JANNEY. Well, most of the things that the Federal equity court can do, and particularly in these unfair competition cases, do not arise from anything except what is intrinsically in equity jurisdiction. For example, take the imitation-package suits. Suppose I am competing with you, and you have high-grade merchandise and I would like to steal some of the goodwill you have created with the product. I imitate the appearance of your packages so that I can deceive the public into accepting my stuff when they think it is yours. There is no factual situation there that bears any relation to the powers of Congress, but it is inherent in equity jurisdiction that you may go into court and get injunctive relief and damages for the injury I have done to you.

Senator BLACK. It is your idea that Congress has the power to give the right to Federal courts to try any case where they obtain jurisdiction of the persons by reason of diversity of citizenship, because Congress sets up that some conduct on the part of the business man is an unfair practice?

Mr. JANNEY. Congress can authorize the Federal courts to do that, but the question remains whether the Federal courts will or will not do it, because the ultimate decision will remain with the court to determine, is it fair or unfair, exactly as arises down here [referring to the lower right-hand block on the chart]. Under the Federal Trade Commission Act Congress has said that people must not indulge in unfair competition, but the court must always decide whether the conduct is unfair or not.

Senator BLACK. Your idea that Congress can invest a court with jurisdiction to determine what are unfair practices under the Federal Trade law, being true, it necessarily follows, does it not, that Congress would have a right to determine what are unfair practices between two types of business in the same State, because the court gets jurisdiction merely by reason of citizenship of persons, and as I understand, the fact they get jurisdiction of persons would not alone give them power to try any case?

Mr. JANNEY. No; not at all; but under this power of the Federal courts to decide between citizens of different States, they can, without the assistance of Congress at all, recognize new species of conduct as being actionable, with no precedent at all to go on.

Senator BLACK. Is it not necessary at all that there be a violation of the Federal law or State law?

Mr. JANNEY. No.

Senator BLACK. Then they can make laws.

Mr. JANNEY. They do make laws. Equity jurisprudence today consists very much of the enunciations by the successive chancellors.

Senator BLACK. The courts, then, are legislative as well as judicial.

Mr. JANNEY. They are; in equity.

Senator BLACK. If your statement is correct, it then necessarily follows that it must be recognized that the courts are legislative as well as judicial.

Mr. JANNEY. In equity, yes. I would be very glad to submit to you some interesting excerpts from decisions on that very subject, but I did not want to take the time to go into so much detail.

The CHAIRMAN. If you will give them to us we will put them into the record as extending your remarks.

Senator KING. Are you contending that the courts have jurisdiction with respect to alleged unfair trade practices where the litigants, both plaintiff and defendant, are residents of the same State?

Mr. JANNEY. No, sir.

Senator KING. The question of diversity of citizenship would cut no figure?

Mr. JANNEY. No, I do not contend that.

Senator KING. It is only between citizens of different States?

Mr. JANNEY. Yes; it is between citizens of different States, and I am suggesting the utilization of the two powers, first the power over interstate commerce, and, second, the power of the Federal courts to afford remedies between citizens of different States, so that a double use of the power in the Federal Government may be brought to the purposes of the regulatory measures that Congress may wish to take.

Senator KING. One of the parties would have to show that they were interested in the unfair practice.

Mr. JANNEY. Oh, yes. I should have said this, when I was telling what were the necessities for this jurisdiction, that the plaintiff must show damage to himself.

Senator KING. In other words, you are trying to strengthen the Government's position with reference to intrastate business, where persons in different States are affected?

Mr. JANNEY. Yes, sir.

Senator KING. And also to undertake to carry out the interstate authority?

Mr. JANNEY. Yes; exactly; because, as I said this morning, it seems to be a tremendously serious thing that interstate commerce should be regulated as to wages, hours, and all sorts of rules of conduct, while intrastate commerce directly competing with interstate commerce is without any uniform regulation from any Federal source at all. I think the partial regulation applying only to interstate commerce would leave interstate commerce at a serious disadvantage.

Senator KING. Do you think the present law is specific enough?

Mr. JANNEY. I think from a legal viewpoint the present law tries to go far beyond any destination it can reach, but I think there should be enough Federal power applicable to this situation to regulate all of the characters of conduct which Congress wants to condemn and which have any effect upon the national business life.

The only situation that cannot be reached by one or the other of these two exercises of Federal power would arise when one resident of New Jersey, for instance, commits unfair competition against another resident of New Jersey. That does not affect, in my opinion, the national interest sufficiently to engage the attention of the Federal Government, and I do not think it should. The Federal courts cannot entertain a suit over a situation of that kind, but the moment either one of those citizens of New Jersey does either one of two things—either emerges from New Jersey into interstate commerce, or commits an act of offense against a citizen of another State—then, in either of those instances, that citizen of New Jersey makes himself directly amenable to Federal control.

Senator BARKLEY. I think you said this morning you thought the equity jurisdiction of the Federal courts might be exercised even in a case between citizens of the same State where one was guilty of an unfair practice toward the other.

Mr. JANNEY. No, sir; I did not intend to make any such statement.

Senator BARKLEY. I know I asked you the question, and maybe you misunderstood me or I misunderstood you, but I had in mind the relatively small number of such lawsuits involving diversity of citizenship that might be brought as compared to the number of unfair practices that might be engaged in wholly within a State, and I understood you to say that the jurisdiction of the Federal court might be extended by Congress so as to include lawsuits of that sort.

Mr. JANNEY. No, sir; I must have failed to make myself clear.

Senator BARKLEY. There would be no remedy at all, so far as the Federal Government is concerned, in the matter of unfair practices committed within a State, as against another concern in the same State?

Mr. JANNEY. That is true, unless diversity of citizenship occurs or unless incidents of interstate commerce are present. In the absence of those, I think the Federal Government has no means of control.

Senator BLACK. Are there not other constitutional powers that could be invoked?

Mr. JANNEY. None occurs to me at present.

Senator BLACK. Suppose the Government, through the Reconstruction Finance Corporation, should not lend any money to any company engaged in unfair practices, would it have the right to do that under the Constitution—it would have the right to lend money to anybody it wanted to, would it not?

Mr. JANNEY. I have no idea, and I have given no thought to it. I would rather not try to answer it. We have been so deluged with half-baked commentary on this general situation, that I want to make no half-baked commentary of that kind.

Senator BLACK. It is Hornbook law that anybody who wants to lend money can lend it or refuse to lend it to anybody, for any reason he may see fit.

Mr. JANNEY. I think that is perfectly clear.

Senator BLACK. And a man can make a contract with anybody he wants to, or decline to enter into it, so long as he does not enter into any unlawful conspiracy?

Mr. JANNEY. Yes; that is correct, but there are limitations on contracts a man may make.

The CHAIRMAN. I notice you say in your bill that this act does not repeal or modify the antitrust laws and the Federal Trade Commission Act. May I ask, do you believe that business in going into these voluntary codes would be frightened if in this law it should be written that in no way is the antitrust law repealed or modified, and not even giving in the new statute the right to meet for purposes of codes of fair practice; do you believe that would be in violation of the antitrust act?

Mr. JANNEY. Not as written, but perhaps as it has been sometimes interpreted.

The CHAIRMAN. If that is stricken out of the law we propose, and it is written that it in no way modifies the Sherman antitrust law, do you believe business then would become partners in meeting for the purpose of forming any kind of a code of fair competition?

Mr. JANNEY. As a legal adviser to business, I certainly would not be afraid of it.

The CHAIRMAN. You think the courts would uphold the right to have a meeting for that purpose?

Mr. JANNEY. I think so, beyond question. In order to avoid any question about it, my suggestion in this draft of the act, in subsection (b) of section 1, is this:

> It is hereby declared to be the policy of Congress to sanction and encourage cooperation, organization, and association among persons participating or attempting to participate in industrial or commercial relationships (as hereinafter defined), provided such cooperation, organization, or association shall be fair and reasonable in method and operation and shall be designed and calculated to serve purposes that are sound socially and economically, and shall not be violative of the policy of any law of the United States, including this act.

I would expressly encourage business to cooperate. I think they need the opportunity.

However, as I indicate in the first subsection of the draft of the act, after saying that the act supplements and does not repeal nor modify the antitrust laws or the Federal Trade Commission Act, as hereinafter identified, I suggest:

It is the intention of Congress that the antitrust laws, the Federal Trade Commission Act, and the present act be interpreted collectively as the comprehensive declaration by Congress of policy concerning standards of conduct in industry and commerce.

In other words, I would like to see brought about a situation where the antitrust law, the Clayton Act, the Sherman Act, the Federal Trade Commission Act, and the new act, would be incorporated in a single body of law, in effect, so that each will have an effect upon the interpretation of the others.

Under the usual rules of interpretation, the more recent act would have its effect upon the earlier acts.

Senator BARKLEY. Where you found some of these acts going in the opposite direction from all of the others, which one would take precedence?

Mr. JANNEY. The later act would influence the interpretation of the earlier act.

Senator BARKLEY. Of course, it is not possible to forecast just what this set of circumstances some court might hold is a violation of the antitrust law. For instance, if two or more concerns should meet in a conference to agree on wages, even though they were an increase in wages, or agreeing on shorter hours for labor, it might have a material effect upon industry and commerce, or many things that would be done by agreement that might jointly be desirable; but would business men take the chance of entering into such a voluntary agreement under the encouragement of one department of the Government if another department is in a position to prosecute them for doing that very thing?

Mr. JANNEY. Certainly so, if this later act expressly authorized the making of codes, and defines what shall be the legal effect of codes when made, we would definitely instruct the courts that it is the will of Congress that people shall be authorized to get together and make codes.

If what I further define, that is, the code shall have no more than a prima-facie effect, if that were made clear in the statute, the courts could regulate those things.

The CHAIRMAN. That is one of the big problems confronting this committee, Mr. Janney. We do not want to affect the Sherman antitrust law, but we do not want to fix the law in such a way that if the business people could get together for the formulation of a code of fair competition, they might run the risk of violating the Sherman antitrust law and incur the very heavy penalties provided in that law.

Mr. JANNEY. With that in mind, and because of the probable difficulty that business will have in adjusting itself again to such an act as this, I have suggested on page 13 of my draft act, a temporary and conditional exemption, and Congress can set up any exemptions it wants to.

Senator BARKLEY. In that connection, it might be impossible for Congress to set up in detail the exemptions, just like it is impossible for Congress to fix rates in the matter of regulating commerce among the States. Would you advocate that Congress attempt to set out

all of these exemptions in the law, or otherwise some executive to do it?

Mr. JANNEY. May I read this section 18, and I think it will answer your question. It reads as follows:

When a code of fair conduct shall have been approved by the Board as provided in section 14 of this act, any conduct expressly sanctioned in such code shall be presumed to be lawful until it shall have been adjudged to be unlawful by a court of competent jurisdiction upon final decree or judgment, after appeal or prosecution of writ of error, if any. Any person who has complied with said code, and has practiced such expressly sanctioned conduct within the period following approval of the code and preceding such adjudication, shall be exonerated from any intent to commit, by such conduct within said period, any misdemeanor under the antitrust laws; and to the extent of said conduct within said period said party shall be exempt from criminal prosecution and from penalties and forfeitures under the antitrust laws and from liability for threefold damages under section 15, title 15, of the Code of the Laws of the United States. The exoneration and exemption aforesaid shall apply also in respect to such conduct continued within 90 days next following the date of such adjudication, provided that any party seeking to avail of such exoneration or exemption shall be reasonably diligent during said 90 days in reforming his conduct consistently with said adjudication. Nothing contained in this section shall be construed to exonerate or exempt any person in respect to conduct not expressly sanctioned by a code with which such person has continuously complied, or to exempt any person from liability in equity.

That means that someone goes in good faith into a code operation, he obeys the code, he does not go beyond the conduct expressly authorized in the code, but unfortunately some court finds that certain conduct has been violative of the antitrust laws. He stands exempt for the period up to that adjudication, from liability.

The CHAIRMAN. It says when a code of fair conduct shall be approved by the Board, then they are exempt.

Suppose that the gentlemen should meet for the formulation of a code, and they discuss their business, and so on, and they get together on a code, then they might be subject to some arraignment or attempted arraignment for violation of the Sherman antitrust laws in that meeting.

Mr. JANNEY. I think that is conceivable.

The CHAIRMAN. How would you get out of that?

Mr. JANNEY. My off-hand opinion as to that, is that we should not get out of it.

The CHAIRMAN. How would you ever get the business people who might be frightened at this Sherman antitrust law and its heavy penalties, to get together and discuss a code and try to arrive at a code that might be sanctioned by the Board, if they were going to run the risk of being prosecuted?

In other words, your bill takes care of the situation after it has been sanctioned and approved, but it does not sanction the initial step in arriving at a code.

Mr. JANNEY. In the part of that draft act, which authorizes the making of the code, perhaps it could be improved to meet the matter the Senator has in mind, but I believe there could be no danger of fear that conduct not expressly prohibited in the antitrust laws would get anyone in trouble.

The CHAIRMAN. That is a question we have got to get together on.

Senator BLACK. As an illustration, I think we can do this without much difficulty. Suppose we reached the conclusion that we wanted to give them the right to regulate their hours and wages, it would be exceedingly easy to put a provision in the law that wherever these

people might get together for the purpose of agreeing on wages in a code, and hours, provisions in a code, that it shall not be a violation of the antitrust law, and that would clearly relieve them from any obligation, would it not?

Mr. JANNEY. Yes.

Senator BLACK. And if we wanted to add some other clause to that with reference to fair practices or unfair prictices, we could likewise add that and state when they met for that purpose it would not be a violation of the antitrust laws.

Mr. JANNEY. Surely, we could do that.

Senator BLACK. And we could state specifically in point that, if while they were meeting in the attempt to agree on a code, they should attempt to agree on prices among themselves, and went into a price-fixing agreement, that should not exempt them, and then they would know that they could not fix prices.

Mr. JANNEY. That would be a very certain way to handle it.

The CHAIRMAN. If when they are having that meeting some fellow who wanted to be a bad boy should mention price-fixing and it got out, and the court got in on it, then some innocent fellows might be convicted of a trust-law violation.

Mr. JANNEY. I have never had any feeling that innocent people were going to be convicted under the antitrust law.

Senator BARKLEY. You would be satisfied if all of the guilty people would be convicted, that would be satisfactory?

Mr. JANNEY. Yes; I should think that would be much better.

Senator BLACK. There might be a bad boy, and somebody said they are all bad when they get together, but unless they actually got together on a fixed price and all submitted to it, there would be no reason for them to be prosecuted. They certainly would not be so timorous or fearful about it unless they thought they had actually fixed prices.

Mr. JANNEY. My experience in American business is that it is not particularly timorous about driving up as close to the prohibitions of the law as they can drive.

Senator BLACK. I think that is justified.

Mr. JANNEY. I think it is entirely justified when the purpose is to comply with the law, and not simply to evade it. I personally would have no difficulty in advising a client under some such act as this, and, of course, I say always that the language of my drafted act could be improved in many respects, but under some such act as that, I would have no difficulty, and I think lawyers generally would have no difficulty in advising their clients that they are perfectly safe to do anything they like in good faith toward building up a cooperative effort, so long as the language of the antitrust law and the other laws, and this law does not prohibit it expressly or by reasonable implication.

I have just two steps further on this chart. The first is, Congress may authorize business organizations, when legal entities, to sue, in representative capacities, in Federal equity courts, against citizens of different States. I had in mind there an effort to minimize the need for litigation, an effort to systematize the trying of test cases, so that we may make rapid progress in building up a jurisprudence on these regulatory subjects.

What I am advocating there perhaps need not have been put in a yellow block, because there is nothing new about it. The Supreme Court of the United States in a most interesting case rendered a decision in a suit by the Associated Press in behalf of its members, which I would like to take just a minute to review, because it illustrates two important points.

There, the Associated Press sued the International News Service, and showed that the International News Service had adopted a practice of getting, for instance, the New York Times, or some other Associated Press paper as soon as it got on the streets of New York at 11 or 12 o'clock at night, and taking the Associated Press notices out of that newspaper and telegraphing them to the International News Service members in the Middle West, the Rocky Mountains, and on the coast, so that they might, in their first editions next morning, publish Associated Press notices.

The Supreme Court was confronted with the fact there was no precedent for remedy against any such practice as that. The difficulty, referred to by the court at some length, was that there was no property right in those new items, they had not been copyrighted, and therefore under the law, and at the common law, the instant those new items were published and put on the street, all property in them was lost, they belonged to the public.

There was no misrepresentation involved in the case, because the defendant said nothing about the source of this information. There was not the usual thing in an unfair competition case, in which one man passes off his product as that of somebody else, and there were none of the usual incidents of unfair competition.

Nevertheless, the Supreme Court said to the Associated Press, the plaintiff, which was present in court representing its members, you are entitled to equitable remedies against this, it is unfair, the defendant is taking advantage of your labor, your expenditures of effort and money, and the defendant should not be permitted to do that, and an injunction was ordered.

There was a suit in which the sole jurisdictional ground was that of diversity of citizenship, and the case is important as a precedent for that reason.

It is important as a precedent for another reason, because the Supreme Court gave equitable remedies in a case where there was no precedent whatever. It gave remedies without any aid from Congress, without any suggestion from legislation at all.

In other words, it was an instance of a chancelor's recognition of a new right of action, and the Supreme Court, recognizing that this new kind of unfairness should be considered actionable, so held.

Now, that sort of evolution, involving new rights of action and new reasons for applying equitable remedies, has been going on for centuries.

Cardinal Woolsey, when he was Lord Chancelor of England, acted along those lines, and became an outstanding chancelor in his judicial capacity, and ever since then the chancelors have been doing exactly the same sort of thing.

I ask nothing more than that this age-old process be accelerated by the action of Congress in the respect referred to here, and that Congress, as to any items it is willing to express, may make those items actionable in the Federal equity courts.

As I say, there is nothing novel about it, nothing that involves any new economic theory or any new legal theory, it is simply the utilization of instruments already at hand, for the Federal Government to use, if it wants to.

A further purpose of this proposed program is this: If we have a code authority operating under a code, the code being prima facie evidence of the validity of its provisions, that code authority—let us say it is incorporated in Arizona—may sue in 47 different States in its representative capacity to test the legality and enforceability of the provisions of its code. I would be very much in favor of placing the litigation policy in the hands of the code authority, or the trade association, because always under the plan I am suggesting they would be subject to the courts; they would be submitting to the courts prima facie evidence that the Federal court may accept or may reject, according to the equities as they may appear on the evidence in the case.

Thus, business organizations or individuals may attack unfair conduct by suit in the Federal courts against citizens of different States, regardless of interstate commerce, and in the end the court must decide whether the conduct complained of is fair or unfair.

In other words, we go back to the same character of issue that the courts have been called upon to decide in these earlier instances I have pointed out.

I can see no valid reason for refusing such rights of private suits as I have suggested. On the contrary, there are several reasons, which seem to me of controlling importance, in favor of private suits.

In the first place, I believe it would be impossible to procure adequate enforcement of regulation, if the powers and duties of enforcement were lodged in the Government alone. We have observed the attempt to procure enforcement under the law prohibiting the liquor traffic. There it was a main defect that the Government's trained personnel was not sufficiently numerous for the purpose. I would apprehend a like difficulty under N. I. R. A. or any substituted statute.

It is hardly possible that any special enforcement group could be set up within the central staff of the Department of Justice in sufficient numbers to attend adequately to the prosecution of unfair conduct. The duties would devolve largely upon the Federal district attorneys or upon some organization such as the Federal Trade Commission.

I have the highest respect, of course, for the district attorneys and for the Federal Trade Commission, but I cannot fail to recognize that they are not equal to the total task.

The district attorneys are already busy men. They will be much busier under other regulatory laws, such as the Securities Act, the proposed new Food and Drugs Act, and the like. It goes without saying that it would be quite impossible for them or their staffs to undertake immediate enforcement proceedings, whenever called for, however pressing the emergency. They must observe the routine of their official obligations and take up their cases in what they consider to be the order of their importance, under the direction of the Attorney General.

As against that situation, it should be borne in mind that promptness of action is of the utmost importance in protecting all phases of business, employers and employees, against unfair conduct. Irrep-

arable harm can be accomplished so speedily that it should be made possible to invoke the intervention of courts on a moment's notice, and with a minimum of red tape. Otherwise the harm is done and the transgressor has taken the benefit of his unfairness.

Furthermore, it should be recognized that the value of a regulatory law resides largely in its deterrent effect, which should dissuade all but the confirmed recalcitrants. And that deterrent effect is strong in direct proportion to the speed and certainty with which the law can be enforced. A multitude of bootleggers were little, if any, deterred when they could follow their profitable occupations for many months before the prohibition agents could detect them and the district attorneys could get around to prosecuting them. Similarly, the cheaters in business will be little deterred if they can feel relatively secure in the belief that it will take the Government a long time to overtake them.

A very different state of mind would be induced if the cheaters were made aware of the fact their that own injured competitors, or organizations representing them, could prosecute the offenders immediately, and would be very likely to, in the Federal courts, for injunctive relief and for the recovery of heavy statutory damages.

Private individuals and their organizations would have their lawyers always at hand for prompt action—counsel already familiar with the business problems of their clients and ready to sue at once for the remedies obtainable in the Federal courts, upon proper showings, by restraining orders and by temporary and permanent injunctions.

Other and quite different considerations argue in favor of the right of private suit. There has been much complaint about the injustice done to the small business men under the current operations of N. R. A. If there is any place on earth in which the business man, large or small, can procure relief against oppression, it is in the Federal courts. It should be easy for the minor and uninfluential business unit to choose whether he would rather take his chances in a Federal court, or at the hands of a field representative of an executive agency, or before some regional compliance board, or the like.

In recent months, if a small business found itself persistently harassed by a dominant unit in its industry, what would have been the prospect that the injured party could persuade the Department of Justice to move promptly and vigorously for its relief?

Against the proposed right of private suit, it will be argued both that private litigation would be likely to congest the Federal courts and that the expense of litigation would be too great for the relatively impecunious victim of unfair conduct, and equally for the defense of those who might be wrongfully sued by financially stronger adversaries.

Neither of these arguments impresses me.

Some of those who fear congestion in the Federal courts advocate a special tribunal, perhaps with regional branches, to try cases of unfair conduct, at least in a preliminary way, relying upon the courts eventually to enforce their orders. It has been suggested that the whole matter be left to the Federal Trade Commission.

But if it is feared that the numerous Federal district courts would be overburdened, although one or more judges can be found in every Federal judicial district in the country, it is hardly likely that the

cure can be found in a single executive commission having relatively few members and relying necessarily, to a large extent, upon a corps of field examiners whose qualifications cannot be compared with those of the Federal judges.

In my opinion, Congress should face the fact that a considerable volume of litigation may be absolutely indispensable if the proposed regulation of business is to have any practical and uniform effect. There is no virtue in making gestures of regulation, unless the intention is to prosecute enforcement as vigorously as need be. If litigation is essential for the carrying out of the will of Congress to stamp out unfair business conduct, then provision should be made for the reasonably prompt dispatch of that litigation.

Evidently, such provision could be made by increasing the number of Federal judges, from time to time, as the need appears. Otherwise, it would be practicable to proceed, as is frequently done already in many cases, through masters in chancery, who hear the witnesses, assemble and analyze the evidence, hear arguments, and report conclusions to the supervising court. This method saves a great deal of time for the Federal courts, and it has the merit that the proceedings are always under the control of a qualified judge. This procedure is decidedly superior to that in which a field examiner, in Oregon, for example, remote from any supervisory control or advice from a commission having headquarters in Washington, collects evidence and reports it back to the commission.

Generally speaking, the expense to litigants, in suits in Federal courts, and in proceedings before masters, should be no greater than the expense involved in equivalent proceedings before an executive commission—particularly if we take into consideration the necessity for counsel from distant points to attend hearings in Washington, and then to try their cases after all in the Federal courts if some of the litigants are aggrieved by the Commission's conclusions.

If it seem necessary, it would be worthwhile for Congress to consider the appointment of numerous masters in chancery, to be paid by the Federal Government, and to act under the supervision and control of the Federal courts, as they do now, in order to speed the progress of important litigation and to relieve the litigants of some of the expense burden. This would be hardly more costly, and vastly more efficient, than to support a large corps of field examiners, under an executive commission, which would be required if the apprehended large volume of litigation should materialize.

The fact that the Federal district courts are scattered all over the country, and are therefore easily accessible to litigants wherever located, would facilitate prompt action and at the same time would tend to reduce the expense of litigation.

The personnel of the Federal courts, beyond question, embodies as high qualities of integrity and ability as can be found in any group in the world. When it is possible for them to do so, under the restraints imposed upon them by the Constitution, they are quick to enforce the will of Congress. In dealing with the regulation of business, the functioning of these courts can supplement, with the highest effectiveness, the action of Congress.

These courts must always remain the refuge of the injured citizen, whether he has been damaged by violation of a Federal law or by the misconduct of a citizen of another State. Is there any reason

why the citizen injured by unfair business conduct, should be denied direct access to these courts, and, instead, should be compelled to ask, and to wait for, the Government to fight his battles?

After all, the issues of unfair business conduct have a double aspect. The offenses are theoretically committed against the good of the Nation; but more frequently than otherwise the acute results are felt by individuals or by groups of employers or employees. Why should not these, the parties primarily affected, be enabled to seek their natural and traditional remedies by direct appeal to the courts?

The example of the so-called "Belcher case" emphasizes the point I am trying to make. A Federal district court had held N. I. R. A. to be unconstitutional; the case had arrived at the United States Supreme Court for review; the suit had been started by the Government, which, being defeated, had taken the matter to the higher court.

It is of the utmost important that the entire body of business and labor be informed as to the constitutionality of the statute. If it is not constitutional, then something must be done about it. Either Congress will cure the defects of the statute, or else business and labor must readjust.

Now, however, the Government has abandoned this case in the Supreme Court, so that the period of trying suspense is to be prolonged, regardless perhaps of the interests of individuals, and businesses generally, who are trying to steer their courses lawfully but do now know how to do so.

I do not presume, at this juncture, to question the sagacity of the move to abandon the Belcher case. On the other hand, I cannot but question the wisdom of placing within the reach of the executives exclusively, the power to say whether or not the Supreme Court shall be asked to pass upon issues vitally affecting the whole people, so that the appearance of a new Solicitor General may determine what is to be done, without regard to the opinions or needs or predicaments of the individuals immediately affected.

It is quite possible that abandonment of the Belcher case is wise; I am prepared to suppose that the prosecution should not have been begun in the first place. Perhaps the reasoning of the new Solicitor General is better than that of all his predecessors in the control of the case. These questions are beside the point.

The shocking aspect of the matter is this: Executive agencies promulgated a code against which, I assume, Belcher protested. In doing so, the executive agency adjudicated against Belcher's protest, and then issued the code as presumably binding law. Belcher, consistently with his protest, violated the terms of that law. He was indicted and was about to be tried in a criminal court, at the instigation of executive agencies. He attacked the constitutionality of the supposed law under which he was indicted.

A multitude of employers and employees are vitally interested in the outcome. The lower court decided for Belcher. The executive agency took the case to the Supreme Court, while the country waited to see what would happen, so that authoritative guidance eventually might be had. But, the executive agencies now decide that the country shall be denied the decisive statement of the law, one way or the other, which it so greatly desires.

In the meantime, there are almost countless instances in which employers and employees are suffering dire injury from unfair conduct, contrary to the entire spirit of N. R. A. But they can do nothing about it. They could if they possessed the right of private suit, so that a few test suits, to determine basic issues, could be pressed to final determination.

One of the slogans of N. R. A. has been that business should be given the opportunity for "self-discipline". Time and time again we have been asked to accept this as an underlying theory of N. R. A. But the primary meaning of discipline, the verb, is "to train to obedience or subjection", and of the noun, "systematic training or subjection to authority". This implies much more than moral suasion, which the members of a business group may bring to bear upon each other. It implies the capacity to force obedience, and to train to subjection to laws, by compulsion if necessary.

Hence, when N. R. A. persuaded business to attempt "self-discipline", it would seem that this must have meant that business itself should be enabled to seek enforcement of the regulations imposed upon it.

In fact, however, business has enjoyed no opportunity for self-discipline, and it can have none unless individuals or groups, or both, be permitted the right to private suit. Otherwise, business and labor must be content to look to the executive branch of the Government as a sort of exalted schoolmaster who can take or neglect disciplinary measures to suit his convenience, or his preoccupation with other matters, or his political inclinations of the moment, while his students follow their own impulses and some of them commit incurable mayhem upon others.

The reasons I have already given should suffice, I believe, to indicate to Congress the definite need that private individuals be enabled to seek their own remedies against prohibited unfair conduct, quite apart from the power of the Government to seek remedies in the name of the United States. Congress may place its entire faith in the competency of the Federal courts to prevent abuses of rights of private suit, and to apply remedies in all proper cases, if only Congress, by appropriate legislation, will point the way.

As a further safeguard against the possibility (which, in my opinion, is largely negligible) that the right of private suit might be abused—I would ask Congress to authorize the Department of Justice to intervene, in behalf of the United States, in private litigation, whenever the public interest may seem to require it.

Aside from the fundamental justice and the practical expediency which would be served by authorizing private suit, there is a further reason for permitting individuals, or their authorized organizations, to seek their own remedies. To do so, would be to throw open for purposes of regulation, the wide jurisdiction of the Federal courts in suits between citizens of different States.

For a great many years, it has been true that a citizen of one State might sue, in the Federal courts, against unfair competition committed by a citizen of another State, regardless of any circumstances of interstate commerce. In such a suit, the Federal court, sitting in the district of which the offender is a citizen, may grant injunctive relief and may decree the payment of damages to the injured party, despite the fact that the offender's business may have been confined wholly within the State of his residence.

This power of the Federal courts was derived from Congressional enactment expressly authorized by the Constitution, and is wholly distinct from that other Federal power under which Congress may regulate interstate commerce and the courts may enforce its regulations.

The distinction is well illustrated in the two cases before Judge Fake in New Jersey, to which I have already alluded. Judge Fake, a United States district judge sitting in New Jersey, on March 13, 1935, held unconstitutional the attempt, under an N. R. A. code, to regulate hours of labor and wages in manufacture within the State of New Jersey.

Contrasted with that case, I myself had occasion a few years ago to sue in Judge Fake's court, in New Jersey, in behalf of a New York corporation, against a defendant, a citizen of New Jersey, who had been guilty of unfair competition against the New York corporation. The plaintiff's manufacturing plant was located in New Jersey. The products of that plant entered into competition with those of the defendant, solely within the State of New Jersey. The defendant did no business whatever outside of New Jersey; hence there was no issue of interstate commerce, nor could there have been, between the parties.

Nevertheless, the parties being citizens of different States, the court could, and did, take jurisdiction and issued a sweeping injunction against the acts complained of, quite regardless of the fact that they were entirely removed from interstate commerce.

Thus the courts are already prepared to exercise a Federal power against unfair business conduct confined within a single State.

Many different species of conduct, in a steadily increasing range, have been recognized as actionable by the Federal equity courts. There has been a long history of development of the jurisprudence of unfair competition, during which the courts have granted relief against injurious unfair conduct.

As yet the courts have not reached the point at which they are willing to say, of their own volition, that the exploitation of labor or destructive price cutting, or the like, is actionable unfair conduct. On the other hand, the courts have more and more stressed unfairness as one of the controlling factors of actionable conduct. There is little, if any, difference in principle between the kinds of unfairness which the Federal equity courts have already redressed and those kinds which are sought to be prohibited under N. I. R. A. or a superseding statute.

What should be considered actionable and what should not is mainly a matter of public policy. In time, I have no doubt, the Federal equity courts, with no aid from legislation, would themselves arrive at the recognition that just as much unfairness and injury can be perpetrated by the exploitation of labor, for example, as by the methods which have already been considered inequitable and actionable.

The only need is to accelerate the evolution of this branch of equity jurisprudence, and that can be done by Congress by the enactment, as already proposed, of a catalog of species of unfair conduct which shall be deemed actionable, not only in suits involving the interstate commerce powers but also in suits in the Federal equity courts between citizens of different States.

Congress was expressly authorized by the Constitution to ordain and establish the subordinate Federal courts and to confer upon them jurisdiction at law and in equity in suits between citizens of different States. Having these powers, Congress has the corollary power to regulate jurisdiction of these Federal courts, so long as it is not made to exceed what is authorized by the Constitution.

If now Congress will announce, as public policy, that new kinds of unfairness are to be considered actionable, the Federal courts can be depended upon to accept these new features of policy and to give them practical effect.

If the two instruments of Federal power, to regulate interstate commerce and to protect citizens of one State against those of another, are called into operation side by side, they can be made to reach, I believe, all of the instances in which Congress may desire to protect the Nation's business, in general, against unfairness.

Neither power could penetrate to the situation of two citizens of the same State, each having its business confined within that State, one of whom might compete unfairly with the other. Such circumstances should not call for Federal intervention in any event, nor should they affect materially the national problems.

As soon, however, as one of those citizens extend his operations into interstate commerce or commit any of the prohibited forms of conduct against a citizen of another State, he would make himself amenable to one form or the other of the regulations which I advocate.

To aid in the simplification of procedure and to minimize the need for litigation, I would ask Congress, finally, to authorize private suits by organizations, acting in representative capacities, in behalf of their members. For example, a code authority, when duly empowered by those whom it serves, should be enabled to bring test suits in the name of the code authority or that of some appropriate member. In this way, with a few test suits, the organization should find it possible to establish, through the courts, the fundamental principles and rules by which its members must be guided.

In summary, I invite the committee to note that the program which I suggest involves, in its fundamentals, nothing whatever of untried or radical or reactionary theory.

I ask no more than the speeding up of a time-honored process; and the employment to that end of the normal and conventional functioning of our three governmental divisions, each in its predetermined field.

I ask that Congress legislate its own expressions of regulatory policy as the duly authorized declarant of the popular will.

I ask that the executive branch devote its effort toward the practical application of congressional policy, toward the elucidation of that policy and its systematic acceptance by the people, toward the adaptation of the numerous features of that policy to the diverse problems and the variants of our business life and toward the performance of the many other duties which properly devolve upon the executives.

I ask that the courts remain, as they always have been and always must be, bound to nothing whatever except the purport and the judicially sanctioned implications of the Constitution and of the constitutional laws enacted by the Congress.

Finally, I ask that the people themselves be enabled to bespeak, in the Federal courts, ordained and established for this very purpose,

the safeguards that should render secure their private rights, as citizens of the Nation, against any aggressors who presume to invade those private rights which, under the Constitution, the Federal forces are empowered to protect.

That is the whole story, gentlemen, as I see it.

Senator KING. Mr. Janney, thank you very much for your very interesting statement, and I am sure the committee will all read it very carefully.

Senator BARKLEY. May I ask just a question?

Senator KING. Certainly.

Senator BARKLEY. I gather from your statement, Mr. Janney, that the crux of the matter is you do not believe it was to abandon the N. R. A. or some set-up, by whatever name you call it, which can utilize whatever has been useful and helpful in the N. R. A., either for the immediate future or for a long term.

Your proposal is a sort of substitute method of utilizing what Congress may desire to preserve of the N. R. A.

Mr. JANNEY. Exactly.

Senator BARKLEY. And you think there are things in it that should be preserved?

Mr. JANNEY. I think the social and economic purposes should be kept in mind and that some form of efficient machinery should be set up by which those purposes would be achieved eventually, but I cannot in my own mind distinguish between the expression "N. R. A." and what seems to me its vital defects as it stands today.

Senator BARKLEY. In other words, you have associated the letters with the bad features without being able to associate them with anything good?

Mr. JANNEY. I do associate them with the excellent economic and social policies, yes; but the governmental and procedural policies seem to me to be perfectly hopeless. The machinery as it exists, or a great part of it, I think can be beneficially discarded, but some of it can be preserved with the highest utility. I think most of the codes can be continued in very much the form in which they exist today, except that they should be prima facie evidence at the most, and should not be binding law. I think nothing should be binding law in a situation of this kind except what Congress utters with its own voice.

Senator BARKLEY. Do you take that position with respect to all departments of government in dealing with all kinds of governmental problems?

Mr. JANNEY. I am not prepared to say it as sweepingly as that, no.

Senator BLACK. Fundamentally, as I gather, your entire argument is based on the theory largely of objecting to laws made by representatives of the industry?

Mr. JANNEY. That is my first objection.

Senator BLACK. Is there any difference between permitting the representatives of one particular industry to officiate and have these laws approved by the executives, and having the representatives of all industry, we will say, for instance, the National Chamber of Commerce to meet representing all industry and draw up a code of laws to govern all industry, and have it approved by the President? The principle is the same, is it not?

Mr. JANNEY. Perhaps theoretically, but as a practical problem there is so much variance.

Senator BLACK. I am talking about the principle upon which you oppose this, just what is the difference in principle of having the National Chamber of Commerce to draw up laws to govern all industry, for all of the people, and approved by the President, and having the separate unit of the National Chamber of Commerce to do it for the separate industries.

Mr. JANNEY. If in both cases they are going to be binding law, I do not think there is any difference.

Senator BLACK. In each instance, what you are opposed to is having business itself through its representatives make laws approved by the President, instead of having the Congress selected by the people make the law and have it approved by the President?

Mr. JANNEY. Yes. In other words, I do not like to see Congress resign from its position as the legislative authority of the country.

Senator BARKLEY. You think Congress, and I do not mean any reflection on Congress, but by reason of its very composition, the panel from which it is drawn generally, and the considerations that enter into the election of members, is qualified, or can be qualified from experience or knowledge of the intimate details of business, to regulate it by setting up a law in minute detail of things which it can or cannot do.

Mr. JANNEY. I think Congress could never go to that extreme. I think it would be humanly impossible for Congress to go that far, but Congress can refrain from giving its sanction to things that it cannot do. In other words, if Congress cannot go to that extreme, I think it should certainly not permit business and the Executive to go to that extreme.

Senator BARKLEY. Business has always objected to being regulated by the Government, but did not oppose this venture on the ground it was a sort of legalized self-government, self-regulation of business.

Mr. JANNEY. The fundamental trouble of business is that the goal of self-discipline has been held up before it ever since the N. R. A. was enacted, and business has never had an opportunity for self-discipline. It has been disciplined solely by the executives. Discipline, the very word "discipline", necessarily implies a capacity for enforcement. If self-discipline is going to be exercised by business, then business must have some manner of enforcement, and business has been trying for some opportunity in the last 18 months to go into court and require observance of regulations, but it has had to wait for the executives to move.

Senator BARKLEY. They have not necessarily had to wait for executives to move, there have been various decisions which have been referred to in your testimony here, decisions rendered by the lower courts, not always on the initiative of the Government.

Mr. JANNEY. They are the cases in which private citizens have gone into court to protect themselves against the executives of the Government.

Senator BARKLEY. In some cases, of course, there have been prosecutions by United States attorneys in districts where matters have been called to their attention.

Mr. JANNEY. Yes; that has been in progress, of course.

Senator BARKLEY. If there is to be self-discipline of business under conditions of enforcement, the only agency of enforcement would be the Government, because business cannot enforce its own decrees.

Mr. JANNEY. I think business should be entitled to go into court and to see whether, as prima facie evidence, certain things are fair and certain things unfair, and to invoke the power of the court to decide those controversies. It is being done in hundreds of cases, and has been ever since we become a Nation. That is what the courts were set up for.

Senator KING. I understand your position, Mr. Janney, and it is, in brief, that the procedure features of N. R. A. are unworkable, they have resulted in confusion, not only to the employer and the employee but the public generally, and there has been under the N. R. A. too much conference of authority upon the executives and various agencies of the Government to formulate what constitutes the laws and to seek their enforcement.

Mr. JANNEY. Yes.

Senator KING. And so, they have become a government of men rather than of law?

Mr. JANNEY. Exactly.

Senator KING. And the draft you suggest goes to maintain the power of the legislative branch of the Government in all of its constitutional vigor and leaves to the courts the determination of the questions affecting trade and customs which might be grounds for relief in the proper exercise of equitable jurisdiction.

Mr. JANNEY. That is correct.

Senator KING. Is there any further statement to be made?

Mr. JANNEY. I thank you, Senator, for this opportunity to appear before you.

Senator KING. The committee is indebted to you for your suggestions and your illuminating address.

Is Mr. Lowell Mason present? If so, please come forward.

STATEMENT OF LOWELL MASON, WASHINGTON, D. C., FORMER GENERAL COUNSEL FOR THE NATIONAL RECOVERY REVIEW BOARD

Mr. MASON. Mr. Chairman and gentlemen, my name is Lowell Mason, 1230 Seventeenth Street, Washington. My home is Oak Park, Ill. I am a lawyer.

On March 7, 1934, I was appointed general counsel for the National Recovery Review Board, an organization created by Presidential Executive order to investigate monopolistic practices and monopolistic tendencies in the control of small business men under the codes.

Senator BARKLEY. Would you mind telling by whom you were appointed?

Mr. MASON. By the Board, Senator; Mr. Darrow and the other five members of the Board created by Executive order.

The CHAIRMAN. The Board was appointed by the President.

Mr. MASON. Yes; the Board was appointed by the President, and the Board in turn appointed me as counsel.

Senator BARKLEY. Did Mr. Darrow suggest your name?

Mr. MASON. Yes; he did. Mr. Darrow brought me down from Chicago.

During the 4 months' investigation which the Board conducted of the N. R. A., my department handled 3,375 complaints. We reported on 34 codes, and held 57 public meetings.

Before going into the findings of the Board, I would like permission to correct one or two common misapprehensions about the activities of this Board.

General Johnson, the Administrator, in a recent article said that most of the complaints of small business men were based on wage chiseling. Out of the three-thousand-odd complaints which we had before our Board, I do not believe there were more than four complaints which dealt with the question of wages. Every one that I know, to my own personal knowledge, had complied with the President's Reemployment Agreement, and the few complaints which we did have on wages were not ruled on by the Board. They were largely complaints of small business men who wanted the codes amended to grant higher wages and higher differentials to some of their competitors, and these were a very small percentage of the complaints we had before this Board.

Another common misapprehension I would like to clarify and straighten out is that the Darrow Board did not criticize the N. R. A. in its entirety. I imagine that public impression came about because of the very vigorous attack the general made upon the Darrow board's findings.

I might say we praised the activities of a great many of the deputy administrators and complimented them upon their endeavors to carry out the President's program, and a great many of the complaints which were filed with the board were dismissed on the ground that they did not have a reasonable complaint.

The general's answer to the Darrow Board was that it was wrong in every respect, and I imagine it must have caused some embarrassment to some of the deputies whom we praised. Mr. Brooks Carroll and Mr. Collins and many other deputies rendered a great deal of assistance to our board.

In the petroleum code, the criticism of the Darrow Board and the suggestions for changes were followed in their entirety, as far as they could be, by Mr. Ickes, Secretary of the Interior. He was administrator of a very difficult economic situation, with a very inadequate law, and the suggestions we made did not go as far as they should have gone if he had had the proper legislative authority.

The CHAIRMAN. Was not the administration of the petroleum code under the jurisdiction of the N. R. A.?

Mr. MASON. No, sir; the code was made under the jurisdiction of the N. R. A., and then turned over to Mr. Ickes as administrator.

Senator BARKLEY. Was not the main trouble not only with the petroleum code, but with the case decided by the Supreme Court, the fact that Congress had not properly written the legislation?

Mr. MASON. That is right.

The CHAIRMAN. We may say we wrote the legislation as suggested to us by Secretary Ickes and his attorney.

Senator BARKLEY. That does not make it any better, if it was inadequate.

The CHAIRMAN. No; I am just trying to excuse Congress.

Senator BARKLEY. Congress is not excusable because it simply writes something somebody else sends down without Congress editing it, no matter where it comes from. But Congress has corrected the act since then, so as to meet the decision of the court and the inadequacy of the previous law.

Mr. MASON. And the new board secretary appointed made recommendations along the line of the Darrow Board.

The CHAIRMAN. We thought it would stand the test, but I am not quite sure Congress read it correctly, and I am not quite sure Congress wrote it exactly as suggested by the attorney in the Department.

Senator BARKLEY. I do not think we did. I think a great many people representing the oil States made some changes in it.

The CHAIRMAN. Yes; that is correct.

Mr. MASON. I would like also to call the attention of the committee to the fact that we feel grateful for the help we received from the N. R. A., particularly through its Research and Planning Division and its Consumers' Advisory Board, which rendered a great deal of assistance to the Board, and I am frank to confess we received a great deal of information from them and a great deal of help from them, which we incorporated in our reports.

Many of the deputies sat with the Board and conducted the examination of witnesses which came before the Board. We felt that was one way to protect ourselves from complaints which were not founded in fact, and, contrary to the practice which the N. R. A. has adopted of not allowing cross-examination, we allowed all witnesses to be cross-examined by the code authority representatives.

There were, however, many deputy administrators who did not cooperate, who had the "mother complex" about the codes they were administering. A great many of them were recruited from the industries in which they helped draft the codes, and they seemed to resent any investigation into the activities of the industries for which they had worked and to which they presumed they would return.

In those instances they either refused to attend or, after they appeared, they were openly rebellious and refused to testify.

Of course, we did not have the power which your committee has, to subpena, and we had to take what complaints came before us and analyze them the best we could and get as much help as possible in the way I have stated.

We had a very unfortunate experience in the steel code, a case that has been held up as one of the examples of fine code making, and I would like particularly to call to the attention of this committee the result of our investigation of that code.

In this connection, I might say that the codes which were the most effective in their operation were those codes which controlled industries which had been called before the bar of justice in the antitrust law, and practically every one of the codes in the industries affected were copies of Supreme Court mandates with the words "thou shalt not" supplanted with the words "thou must."

You have full knowledge of the *Addiston case*, which is one of the leading cases in the cast iron and cast-iron soil pipe industry, and I want to read to the committee one or two lines of that, and then read the counterpart as it exists in the code.

In the case of *Addiston* v. *United States*, it is said [reading]:

> Plaintiffs show in the petition that on the 28th day of December, 94 defendants entered into a combination and conspiracy amongst themselves by which they agreed that there should be no competition between them in any of the States in regard to the manufacture and sale of cast-iron soil pipe, and the defendants since that time operated their shops and have been selling and shipping pipe manufactured by them into other States under contract for the manufacture and sale of such pipe with citizens of such other States.

Then, there was the question of the combination brought up in this code.

The CHAIRMAN. We have heard that before.

Senator BARKLEY. Yes; and we will hear it again for the next few days.

Mr. MASON. On page 264 in the cast iron soil pipe code there is a provision that they cannot sell below the reasonable cost of such product and a provision for the filing of code prices.

In the iron and steel industry, according to the testimony before this committee, as I read it, the general impression is that the code authorities do not control the manufacturers of their own industry, but they are under the supervision of, and all final decisions must go through, the hands of the N. R. A.

We have in that particular industry the counsel for the N. R. A., who is an administrative member of the steel code, Mr. Simpson, who was the first deputy in charge of drawing that code, who was a member of that industry, and who has since left the employ of the N. R. A. and gone back into the industry and is also an administrative member of that code.

I would like to insert in the record a statement from the publication Steel, of January 21, 1935, this being the steel industry's trade magazine. The article is entitled, "Windows of Washington", and says [reading]:

> Around open prices as great a controversy can arise as over the present price clauses. The crux of open prices is a waiting period; if prices are filed following sales, they become historical prices only; but if a waiting period is retained, the change from the present system is negligible.
>
> In any event, N. R. A. is coming to see that in the case of steel, base prices are only the core of the apple. If the code authority retains control over extras, it need not worry whether base prices are historical open ones or are filed under present restrictions.
>
> On many products, and some of them common ones, extras are 10 to 15 times the base. Since the steel code became effective August 19, 1933, three books of extras, each larger than the preceding one, have been issued.

I wanted to call that to the attention of the committee, because I believe the charge is made that one of the Senators had grossly exaggerated when he said steel had raised its prices some 100 percent. Yet from this statement of the steel trade paper, it seems that it has raised its prices 10 to 15 times as much as the base, and I might say that was a practice which was not in force and effect prior to the adoption of the code.

Senator BLACK. How much percent did you say that was?

Mr. MASON. You cannot say the percent, because in some cases there were no base prices before the code and no extra prices at all, and now they have placed these different extras on.

The CHAIRMAN. Does that affect a very small percentage of the trade?

Mr. MASON. It is a very painful percentage, so far as the small fabricators are concerned, because it puts the small fabricators, especially in areas not close to the base point, at a decided disadvantage, and in many cases it will put them out of business if it continues.

In the original steel code, the code authority, which is the Steel Institute, had the right to set prices on all products—that is, everybody was to file their own prices—and if the Steel Institute did not

like it, they would send auditors in to audit the books and set the new prices which the man should charge. That was section 5 of the steel code.

The Darrow report came out, I think, 2 or 3 weeks before the steel code was up for renewal, and it was very embarrassing to the steel group to have the report come at that time, but it did, and they had to change that, so they struck out section 5, which gives the institute the right to fix all prices, but left in section 7, which gives the Steel Institute, and it now gives them the right, to fix prices on extras.

In consequence thereof, when the extras have gone to 10 or 15 times what the base price is, you can see they still have a strangle hold on this industry, so far as fixing prices is concerned.

Senator BARKLEY. What are extras?

Mr. MASON. If a fabricator wants a certain amount of product that will be more brittle and with higher tensile strength, or if he wants holes put in, that will all be done as extras.

As I read from the publication, there have been three books issued of extras, each book larger than the one before, and they show that the extras are 10 to 15 times the base price of the steel itself.

Senator BARKLEY. That would not apply to holes drilled, would it?

Mr. MASON. It would apply to whatever it happens to be. I am not familiar with all of the extras, but in some cases it is other materials they put in, and in some cases, as I understand, it is the drilling of holes before they are shipped, but that does not mean fabricating at all.

Senator KING. Most of the steel products consist of fabrications, in comparison with steel ingots, and such?

Mr. MASON. Fabricated materials are not under the steel code.

Senator KING. What I mean, the greater part of steel products would come under the head of fabricated steel.

Mr. MASON. It eventually goes into fabricated steel, yes, sir.

Senator KING. Before you proceed, may I ask why was the Steel Institute given authority to manage and control the code, formulate the code, and execute the code?

Mr. MASON. They represent about 95 percent of the entire steel industry. In fact, this is one case where we have no complaint of small industries, because there is nobody who could complain, except the consumer. They received code no. 11, because they could get together pretty quick on their code.

What they did, as I see it, they took the Pittsburgh-plus ruling in the Federal Trade cases, and simply changed the words from "must not" to "must."

The CHAIRMAN. As I understand it, the only price fixing in the steel code now is with reference to these extras. Is that right?

Mr. MASON. No; there is the base price, the commodity price.

The CHAIRMAN. The base price and the extras?

Mr. MASON. Yes; that is correct, and the adding of the freight rate, which is of course known.

The CHAIRMAN. I am just getting your reaction, now, because I know when one builds a house and they have to have some extras, the fellow building the house generally puts it on pretty heavy for the extras. I can understand in the purchase of some steel, if, for instance, a fellow had to have some extras, it might be a case to have the whole industry to pass on it, as to its fairness, rather than one individual seller. What is your reaction to that?

Mr. MASON. Isolating raw materials into one trade makes it pretty hard on the independent fabricator, because the big producer, like the United States Steel, who have the fabricator, Ambrig, and Bethlehem with its McClintick-Marshall, are at an advantage, and under the code the small fabricators have to charge the code prices.

For instance, if Senator Black is the subsidiary of one of the companies, they can hand him the material and make no charge whatever, and he can undersell the small independent fabricator, because he is not bound by the code.

That is why there are so many of the small midwestern men on the spot, such as the *Ames case* now before the Supreme Court, on the question of fabricators.

Senator KING. What do you mean by being on the spot?

Mr. MASON. The point in favor of the small competitor is that he can sell cheaper than the big man, because of less advertising and other costs, but he cannot get any market for his goods, because, in the case of the fabricator, when controlled by the corporation, such as the United States Steel Co., they can make a profit, because the United States Steel Co. can give him the steel at whatever it wants, and he will not have to pay the full price.

Senator KING. Mr. Mason, have you read the findings of the Federal Trade Commission recently submitted in their report respecting the monopolistic conduct of the steel organizations?

Mr. MASON. Yes, sir.

Senator KING. Do you agree in their findings?

Mr. MASON. Absolutely, Senator. It will wipe out all of the small independent fabricators if we do not do away with those practices in the steel industry now.

In our proceedings, we sent an investigator to New York to investigate the Steel Code Authority files. We had the secretary of the Steel Code Authority on the stand, and there seemed to be some controversy over his testimony, and he finished his testimony right in the middle of cross-examination, and then went up to New York and never came back before the Darrow Board.

Then we sent an investigator up to look into the files and we were denied admission to their records. If the N. R. A. had had jurisdiction over him, and Mr. Richberg being the counsel, I am sure we would have received permission to go in there, because the N. R. A. did specifically order assistance to be given us. I, of course, believe Mr. Richberg was powerless to help us out, just as the Federal Trade Commission was powerless to get the record when they went up to get the files.

Senator KING. Doesn't the Federal Trade Commission have power to subpena?

Mr. MASON. Yes, under section 9 they are supposed to have it, but I do not know why they did not use it, and I see by the new bill that power is supposed to be given to any branch of the Government. However, there is some doubt as to whether it is any good, because we are not able to get records, and they were not able to get records.

The United States Steel Corporation order reads as follows, on section 2:

> From quoting for sale or selling in interstate commerce, steel products on any other basing point than that where the products are manufactured or from which they are shipped.

Of course, the steel code itself completely nullifies that in schedule F, because it sets forth what shall be the basing points, and all prices must be from those basing points, plus all-rail freight rates to destination. That means the destination where it is to be fabricated.

In other words, if a small fabricator wants to buy some steel, he has to tell the United States Steel Corporation who his customer is, in order to even get a price, and after the corporation gets that name it does not take much of a stretch of imagination to believe they can turn that over to Ambrig or McClintick-Marshall, and the small fabricator will find he will have a competitor who does not have to pay the price he does, and who can get the business, so that the small competitor is out of it.

Now, the price rules issued after the new steel code was formulated contain a number of additional basing points, and they also contain basing points on materials which I do not believe exist, such as ingot blooms, and such items, which I do not believe exist. While I am not entirely familiar with it, yet I do not believe there is such a thing in commerce which is sold.

Increase in price does not help the fabricator, because the only man who can file the price is the man who has a mill in that particular location.

I have some further citations, and the reason I am burdening the committee with these cases is because General Johnson, in a recent article, said—and I think he was right and honest—that the antitrust laws and the N. R. A. would no more mix than oil and water.

Senator KING. You accept that statement?

Mr. MASON. I accept that absolutely; they cannot mix, and you cannot have price fixing and price control under the N. R. A. and have the antitrust laws exist at all. I am just taking the Supreme Court decisions and reading them and reading the codes to show that the codes are just a direct reversal of what the law says.

In the *Federal Trade Commission* v. *Pacific States Paperboard Association case,* the industry is openly defying the mandate of the Supreme Court, and of course, they are doing it with immunity.

The Federal Trade Commission issued a cease-and-desist order against them, and it was taken to the Supreme Court; and the Supreme Court held that fixed uniform prices habitually quoted from the same list as they have fixed for intrastate, the Commission was justified in inferring that such use over the State line lessened the competition, and fixed prices for interstate commerce.

Senator BARKLEY. When was that decision rendered?

Mr. MASON. That was 1927.

Paragraph (*b*), section 5, of the code establishes the standard method of determining current cost of any product in the industry and contains a requirement that no member shall sell any product below such cost.

Senator KING. Before proceeding further, may I ask whether or not the Darrow report was abbreviated and whether there has been conclusion drawn relative to the matters which it considers and which finally resulted from the investigation?

Mr. MASON. There was not, but I have made a summary; and I would like to read that later on, with your permission.

Senator KING. That will be satisfactory.

Senator BARKLEY. Is the practice of selling a product below cost in any industry regarded as a form of unfair competition?

Mr. MASON. The *Federal Trade Commission* v. *Sears, Roebuck & Co.* held it was an unfair trade practice; and you will find in the 17 volumes of Federal Trade decisions I have here every conceivable precaution against unfair trade practices.

Senator BARKLEY. Of course, the seasonal period with which we are familiar when we replenish our wardrobes for the coming year, and so forth, are not to be regarded; but the habitual selling by any concern that is big enough to do it below cost of production has always been regarded as an unfair practice against its competitors. Is that correct?

Mr. MASON. Yes, sir.

Senator BARKLEY. And that is the thing this code seeks to protect the industry against, the one from which you just read.

Mr. MASON. In the paper case?

Senator BARKLEY. Yes; the one you just read.

Mr. MASON. Yes; that is correct.

Senator BARKLEY. In other words, in all of these codes there is an attempt to prevent the industry from practicing the form of competition that is involved in somebody selling below cost, which was originally for the purpose of driving the small man out of business because he could not sell below cost.

Mr. MASON. Yes; that is correct.

Senator BARKLEY. There is nothing inherently wrong in attempting to protect industry as a whole from the practice of those who sell below cost, because they can afford it for the time being, in the hope that after awhile their competitors will be driven out of business, and they can raise their prices sufficiently to recoup any losses sustained while they were selling below cost.

Mr. MASON. That is quite correct.

Senator BARKLEY. So that a code, if it does contain a provision against selling below cost, is not to be held inherently wrong.

Mr. MASON. No, Senator; it is not. However, we have had this brought before us, particularly in the coal cases and the ice cases in Chicago, where they printed placards among the big industries which were handed around to the small competitors, and they said, "Here are your prices"; and the code authorities had not even been appointed, and there had been no ruling on it at all, but it was merely machinery fixing the prices below cost. It is like handing out a bunch of machine guns to a lot of young fellows and saying to them, "next year we will give you instructions how to use this gun", and the public is getting shot at pretty hard.

Senator BARKLEY. Of course, the circulation of placards and circulars might be a source of facts from which to determine whether there had been a violation of law, but that would not necessarily mean somebody had sold below cost or that the prices fixed in the placard or circular was unreasonably high, but that would be a matter of proof.

Mr. MASON. Of course, trouble came because the smaller dealers could not get supplies from the big dealers unless they paid the prices for the product, according to the placard which had no authority in law. That is where the trouble came in to the small manufacturers.

Senator BLACK. The Sherman antitrust law made it an offense to sell below cost to put a competitor out of business.

Mr. MASON. Yes.

Senator BLACK. So it was a criminal offense to do that before the code was adopted.

Mr. MASON. Yes.

Senator BARKLEY. Did that stop them from doing it?

Mr. MASON. Under the Hoover and the Coolidge administrations, to say that we had any such thing as perfect law enforcement would be foolish.

Senator BLACK. Our Democratic platform was to enforce the antitrust laws.

Mr. MASON. Yes; that is correct, and under President Wilson's administration we had enforcement of the antitrust laws.

Senator BARKLEY. If you were going to increase employment in this country, you had to have some expansion of a situation or a condition which might actually be regarded as a violation of the antitrust laws if you expected to get business to increase, didn't you?

Mr. MASON. No; practically all of the employment, I believe, came before the codes were adopted, under that splendid reemployment agreement of the President.

Senator BARKLEY. It was not contemplated that would be the only expansion of employment, because there was a great upspurt of employment as the result of the new sociology that took possession of the people early in the spring of 1933, and nobody expected that would be the extent of the reemployment; but we will not go into that.

However, it was not contemplated that business would enter into such agreements and such forms of cooperation as would make it impossible to reduce hours and spread employment and eliminate unfair practices; but it was necessary to hold out—and Congress felt it was necessary and said so—to hold out a hope that business men would not be suffering the fright of possible prosecution or doing something at the invitation of the Government, which under any other department of the Government would be regarded as a violation of the law and result in prosecution. You could not have the Government in its different departments going in opposite directions.

Mr. MASON. That is, unfortunately, what they are doing now.

Senator BARKLEY. That may be a matter of administration, but the law itself may not be responsible for that.

Mr. MASON. My own opinion is, I would have to have an honest difference of opinion with you there. I believe it was the President's Reemployment Agreement. I do not believe the steel industry and the large integrated industries which are the only ones that have been able to take advantage of it, because they can police their own trades, and therefore I do not believe it has helped employment in their branch.

Senator BARKLEY. The results may have been disappointing to business, but the object of the law itself was splendid.

Mr. MASON. That is correct.

Senator BARKLEY. There was nobody at the time Congress passed the law who raised any serious question as to the advisability of inviting business to get together and cooperate?

Mr. MASON. I think Senator King, Senator Borah, and some others raised that question on the floor.

Senator BARKLEY. That is true, and I do not mean to intimate they were nobody. I did not mean it in that sense at all, because they are both very competent legislators. What I meant, there was a very near unanimous view in the country and in Congress that the emergency justified that unusual effort to be made to invite business, as a whole, and industry, to get together in a cooperative spirit, not only to eliminate unfair practices which had not been eliminated by the antitrust laws, or by any other law that had ever been enacted, not only for the purpose of eliminating those things, but by agreement and common understanding to raise wages and to lower hours of service, so that more men could be employed. That is a fair statement?

Mr. MASON. Yes.

Senator BARKLEY. Of course, we have learned a lot as a result of it, and I think those who have administered the law have learned a lot. The fact they are recommending very radical changes in the law, shows they have learned a lot.

Mr. MASON. I think in fact they are just learning now what the Federal Trade Commission has known for many years.

Senator BARKLEY. I will not enter into a controversy between the N. R. A. and the Federal Trade, which I recognize exists to some extent rather acutely, which I think is unfortunate, two branches of the Government working against each other and jealous of each other.

Mr. MASON. Yes; and the Attorney General's office also, because it has just finished a very vigorous sugar prosecution in New York before Judge Mack, and they were perpetually enjoined from engaging in 45 different activities, which some four hundred and eighty-and-odd codes perpetually required. I would like to go into that later on, after I have completed some of these matters I wish to call to your attention now.

In the plumbing fixtures industry we had complaints before the Darrow Board that manufacturers were not allowed to sell grade B fixtures with a dent in them, or something like that. Section 4 of article 8 provides:

> No manufacturer shall sell in the United States other than first grade products guaranteed against manufacturing defects.

In other words, they will only sell grade A products.

In *United States* v. *Franklin Potteries*, in the opinion of the court was part of the Government case to show it was the purpose of respondents in aid of their price-fixing agreement not to sell second grade or class B pottery in the domestic market.

In other words, in the plumbing fixtures industry they took the mandate of the Supreme Court and just reversed it.

In that case also the court criticised the phrasing designating who should be wholesalers and who should be retailers, which is also covered in the code in the reverse English on page 130 defining what a wholesaler shall be, and how much stock he has to have, and so forth, the code being a direct reversal of that.

Senator KING. I do not understand you. Do I understand you to mean the code attempted to decide who are retailers and who are wholesalers?

Mr. MASON. It does. A man must maintain a certain type of storeroom to get a certain discount, and they had done that in the

Franklin Pottery case, and the court held that was unfair and a violation of the law.

Senator KING. Did the code hold that a retailer might not have the same advantage if he purchased from the manufacturer, as the wholesaler had?

Mr. MASON. Yes; that is correct.

Senator KING. Did it require that the manufacturer could sell only to the wholesaler?

Mr. MASON. Yes, sir.

Senator KING. And not to sell to retailers?

Mr. MASON. That is correct, and it froze the avenues of the trade.

Senator KING. Did the Darrow committee find that such provisions as that were common in codes?

Mr. MASON. Yes; in practically all of the important codes you will find a definition of who shall be wholesalers and retailers, and a provision for blacklisting and boycotting those who are not. Of course, the most outstanding one is the lumber code.

Senator KING. Did the Darrow report find that those provisions were unfair and tended toward monopolistic control of the industry?

Mr. MASON. Yes. I do not know whether there has been a definition of monopoly for the committee, but as I understand just common phraseology, a monopoly is freezing the avenues of competition for the benefit of some privileged few, so that they may get a higher price for less goods.

Senator KING. I say it in the sense in which it is employed by the court, and in the sense in which it is used in the National Recovery Act, because the word "monopoly" or "monopolistic practice" is referred to in the National Recovery Act.

Mr. MASON. Yes; that is correct.

Under the Motion Picture Code, in *Paramount-Famous* v. *United States*, the court held that a contract which provided that all of the producers should suspend service when some man who was buying films violated his contract with one of those producers, was a violation of the antitrust law.

In section 3, page 248, of the motion picture code, the local grievance board shall have power to direct that distributors of motion pictures shall refuse to enter into license contracts for the exhibition of their respective motion pictures by such distributor, and shall refuse to make further deliveries of motion pictures to such an exhibit under license agreement executed after the effective date of this code, if the exhibitor fails or refuses to so cease and desist, referring to the ruling of the grievance board.

In that code they have also incorporated their standard licensing contract, which is a violation of the antitrust laws, unless within the protection of N. R. A.

Senator KING. I understood you to say that the Darrow committee made an examination of 37 codes.

Mr. MASON. Thirty-four, Senator.

Senator KING. Was there a specific finding as to the effect of each code, or the evils or benefits of each code?

Mr. MASON. Yes; there was a specific finding in each one of those codes, and there were recommendations in all of those except the ones dismissed, of which there was a large number.

Senator KING. When you dismissed a complaint, did that mean you found nothing wrong with the code?

Mr. MASON. No; we found that the complainant who had filed his complaint had no valid complaint against the operation of the code; and we found a good many of those.

Senator KING. In each of those 37 codes did you find there were practices which were hostile to proper competition and to the best interest of the consuming public?

Mr. MASON. No; I would not say so. For instance, in the cleaning and dyeing industry we recommended no change, because it was an absolutely hopeless situation; and, incidentally, that was the only one that General Johnson in his reply said amendment should be put in.

Senator KING. Did you favor amendments of all the other codes?

Mr. MASON. Practically all of them, but we did not in the Schiffli industry, because that was a labor question, and we did not go into labor questions at all.

Senator KING. Did those amendments deal with what might be called "unfair practices", or deal with the provisions of the code which you considered would justify or support improper combinations and restraints and monopolies?

Mr. MASON. All of those amendments were directed toward releasing code control from the control of the big monopolies which were in control at the time.

Senator KING. Did your findings relate to the effect of codes upon the small business man?

Mr. MASON. Yes; they did.

Senator KING. What were the findings?

Mr. MASON. I would like, if you will permit, to finish these three other Supreme Court cases and then go to that.

In the floor, wall, and clay tile case, the code is in direct contradiction to *Montague* v. *Lowry*, where the manufacturers agreed to sell only along certain channels. Article 12 of that code defines what a merchant tile contractor shall be, as follows:

"(1) Specializes in installations of but does not engage in the sale of unset tile, bathroom accessories, or other accessories which are a part of the tile order.

"(2) Maintain adequate showroom or place of business open to the public during usual business hours, which if it shall be a part of a residence is separated from the residence entrance, and contains at least 250 square feet of floor space, and is equipped with suitable furniture and equipment for business office and showroom.

Mr. MASON. In other words, Senator, not only going to set the prices for 19,000,000 people in the United States but also going to tell every business man what kind of furniture he has to have in his place to do business under the code.

Senator KING. What code was that?

Mr. MASON. The floor, wall, and clay tile products.

In the *Eastern States Retail Lumber Dealers Association* v. *the United States* (234 U. S. 601) the court held that while a retail dealer may unquestionably stop dealing with a wholesaler for any reason sufficient to himself, he and other dealers may not combine and agree that none of them will deal with such wholesaler without—in case interstate commerce is involved—violating the Sherman Act.

That, of course, is in direct contraversion to the principles of the lumber code, which says that [reading]—

As a condition of the grant of wholesale discounts, the wholesaler shall not rebate or allow any part of said discount to any customer or sell or offer to sell

any item of lumber or timber products under the minimum prices established as provided in this code, except to another wholesaler or another manufacturer, and he shall conform to all provisions of this code as they apply to him in the sale or distribution of each species.

As I understand, N. R. A. has found that this particular price-fixing provision has been so vicious that they have suspended the price-fixing clause.

We had a good many complaints before the Darrow board in the lumber situation. One man wrote in and said that he was unable to make a living if he had to charge for delivery; when, as a matter of fact, his lumberyard was located in a country district, and the farmers drove up with their wagons and took the lumber from him at a reduced price. We wrote him back and asked him to send us the particulars of the case; and the next week his widow wrote us and said he had committed suicide, worrying about the provision.

Senator BARKLEY. You did not accept that circumstance as proof of anything, did you?

Mr. MASON. No, Senator; but we had a great many complaints in the lumber industry, and I think perhaps it is a fortunate thing that they have taken out the price-fixing.

In fact, Senator, a great many of the recommendations of the Darrow board has been followed by N. R. A. It was after we filed our report against the steel code that they changed that in some respects; and it was after our report on price-fixing, of June 7, that the general came out with an office order saying that all codes would have their price fixing struck out, and there was such a storm of protest broke over his head at that time that 2 days later he had to modify that and say that all new codes would not have price fixing but that the old ones could go ahead with their letters of mark.

Senator BARKLEY. I would like to get clear whether the price fixing of which you speak was an effort made in the codes specifically to fix prices of any products or whether it was an inhibition against the sale of the products below the cost of production?

Mr. MASON. The codes provided an inhibition against the sale of products below the cost of production. It is just like the mercury in a thermometer. Five minutes from now the mercury will be different. N. R. A. has tried, since its inception, to figure out a cost-accounting system, and they have not been able to do it, and I do not think they ever will be.

Senator BARKLEY. When you speak of price fixing, you do not mean that the code actually fixed prices but that under a provision prohibiting the sale below cost that there was so much divergence in the estimate of cost and the methods of finding out what cost was that it was difficult to guarantee a sale below cost without the possibility of fixing a price that was too high for that cost?

Mr. MASON. That is correct in most codes, Senator. There were some codes that actually fixed prices. Steel had it. We are operating now under a steel code which actually fixes prices. The Steel Institute decides the price to the consumer.

That was best illustrated in the controversy between Mr. Eastman when the question came up of the loan to the railroads to buy 800,000 tons of T-rails over 60 pounds in weight. As you recollect, Mr. Eastman wrote to the four largest steel producers of the organization and told them that he would like to have assurances that there would

not be collusive bidding if he loaned the money to the railroads. According to his correspondence, the agreement was that there was not to be collusive bidding. When they bid, all of their prices were the same. It was $37.75. Mr. Eastman, who has considerable experience in this line, was of the opinion that $35 a ton would net the steel industry a fair return for their profit. And being aware of the fact that this international steel conference, which Mr. Schwab has just returned from prevents the importation of steel from foreign countries—where the price of steel has gone down along with the price of living—Mr. Eastman felt that they should come to some understanding about this price before he would loan the money to the railroads.

Senator BARKLEY. What was it you said about this conference?

Mr. MASON. Every year, or every so often, they have an international steel conference and they agree—something like the Gary dinners I believe—they agree that one country will not come into the other and import steel to compete with the steel here. Of course, the steel over there does not cost what is costs here, because their prices have followed down along with the other trend, while here, ours are the same. I mean, it has remained the same.

Senator BARKLEY. There is no difficulty in anybody shipping steel in here if they want to, if they pay the tariff.

Mr. MASON. Nobody wants to.

Senator BARKLEY. Nobody in any country seems to want to do anything to help trade with another. They just want to sell their own products.

Mr. MASON. When Mr. Eastman received his bids on steel, they were all collusive, they were all one price. It was $37.75, and he felt that $35 was sufficient, and he told the steel companies that he would agree to their price if they would allow the Government to go in and ascertain what their profit was. Of course, they threw up their hands in horror at that suggestion, and I think finally, without acquiescence of Mr. Eastman, struck a figure of $36.375 which today is the price that you have to pay for steel rails, no matter where you buy them.

On all bids, it is the same price, which, of course, Senator, of itself shows that there is collusion and shows that the public is not getting a fair break.

With reference to N. R. A. managing industry, I think the *Federal Trade Commission* v. *Keppel* is about one of the most dramatic instances of the danger of allowing code authorities and men who have worked with and were brought up and closely connected with code authorities, decide what the fair-trade practices shall be. I want to say to begin with, that the N. R. A. is now complying with the Federal Trade Commission rules.

Senator BARKLEY. When was that case decided?

Mr. MASON. February 5, 1934. Keppel was making a small candy package which contained either a penny or a little token which the child when he opened that package, showed him how to get another package free, and the Supreme Court held it was against public morals and was not a fair trade practice, and they filed a mandate against Keppel and he could no longer do that.

The code, too, provided that that was an unfair trade practice. Rule 19 states:

No member of the industry shall sell or distribute the type of merchandise commonly referred to as "break and take," "pick or draw," or merchandise of a like character serving the same purpose.

But the unfortunate part was that whoever the deputy was that had charge of this case, felt that perhaps the Supreme Court was wrong, and he issues an exemption, and at the time the Darrow Board was investigating this thing, we severely criticized that and said that the deputy administrator should not set himself up above the Supreme Court.

Mr. Huston Thompson, who was at one time chairman of the Federal Trade Commission, walked into the N. R. A. with a group of Supreme Court reports and they asked him what he brought those in for and he said, "I have just got a recent case which bears on a particular controversy here," and they said, "Take it out, we don't want to hear what the Supreme Court has to say about that."

That was exemplified in this particular case. After we had a lot of criticism of that, N. R. A. did change it, but they had granted this exemption and I think it is a dangerous thing, Senator, for any industry to have their own control, control their operations themselves, so that they can set themselves up above the law of the land.

Senator BARKLEY. How would you remedy that if you are to have any exercise of control at all? Would you suggest that men who are not in any way familiar with the business be put in control of it, or that they have the final word? Assuming that we are to have some form of governmental and private cooperation in this field, how are you to get away from the possibility that somebody that knows something about the industry because he has been in it, would be put in a position of authority?

Mr. MASON. Senator, that gives me a very good opportunity to present you with a draft of an Executive order that I drew when we completed our work in the Darrow Board. I would like to leave copies of this with the committee. It is not an amendment to the present contemplated law, but I think it answers your question completely.

If you are going to have the protection for the consumer, you cannot leave industry to manage itself. Mussolini found that out, Mr. Hitler found that out. Parmasati was the strong-armed man over there, and when he got unpopular they took him out and Mussolini is now directing that himself. Even over there they do not provide for an essentially controlled economy such as Russia and the United States now have.

You have in your Fascist state in Italy the appointment of Podesta and other men who live out in the Provinces and manage the Government; and you have your corporations the same as we have in N. R. A. 22 divisions, which run the different branches; but especially the Fascist forms in Germany have recognized that you must not let industry run itself, because they have their cartel courts, and they have had those for a great many years; and Mussolini in his recent decree has said that if any small industry or anyone wishes to file a complaint against a cartel court, he tries that case before a fair and impartial body which has nothing to do with and has no financial interest in the particular industry.

Senator BARKLEY. That is the trial of the case?

Mr. MASON. Whether he should be exempted from the operation under the code.

Senator BARKLEY. That is a sort of review of the action of the cartel court, which I believe has some connection with the industry which it controls. Am I correct about that?

Mr. MASON. No, Senator. The courts in Charlottenburg, where they have this cartel court, the judges are not connected with industry—that is, the men who preside at the trial. They have no financial interest such as——

Senator BARKLEY (interrupting). What do they try? Is there a sort of an appeal court from regulations that have been imposed by somebody down below?

Mr. MASON. Yes: any small industry that wants to have an exemption from the operation of their code just applies to this court, and if it is shown that his exemption is equitable or that the code imposes restrictions upon him which are unfair, then this court, which corresponds in some respects to our Federal Trade Commission, can grant him an exemption, and of course by granting him an exemption they can eventually wipe out all of that particular monopoly.

Senator BARKLEY. But the court that tries that has not participated in the formation of the codes?

Mr. MASON. That is correct.

Senator BARKLEY. What body has formed the code?

Mr. MASON. The cartel.

Senator BARKLEY. The cartel?

Mr. MASON. Yes.

Senator BARKLEY. But they are drawn from industry, are they not?

Mr. MASON. Yes, sir.

Senator BARKLEY. So that you have a similar situation there. The cartel are drawn from industry, and they fix the codes?

Mr. MASON. That is correct.

Senator BARKLEY. Then an appeal can be taken to the cartel courts, which are not composed of anybody in the industry, but supervise impartially, presumably, what has been done by the code authorities which have been drawn from the industry, so that even there you have——

Mr. MASON (interrupting). They do not supervise. In their law, to prevent the misuse of economic powers, which was passed before Hitler became the dictator, they did not have anything to do with the drafting of the cartel. Merely with the remedy of the abuses.

Senator BARKLEY. The court that passes on complaints has had nothing to do with the origination of the situation or the codes or the regulation? That has been done by the industry itself?

Mr. MASON. Yes. That is where their system is even better than ours, where we have essentially a controlled economy. Here we have the men drawing the codes and operating the codes and defying the Government, too, Senator, with impunity, and of course that should be changed.

Senator BARKLEY. That is a matter that we will have to give consideration to in writing the law. I did not want to divert you, but this all leads up so many avenues that it is difficult not to explore them a little.

Mr. MASON. Senator, I wonder if I could be excused until tomorrow. There was a draft of the comparisons that I wish to make on this point that the Senator brought up, which I would like to submit to the committee tomorrow morning if I may be excused?

Senator KING. Is there any other branch of the subject——

Mr. MASON (interrupting). Tomorrow morning I would like to get in those excerpts from the Darrow report, if I may.

Senator KING. May I ask again. Have you abbreviated the Darrow reports so that we can have the substance of the findings and the conclusions with respect to the investigations made?

Mr. MASON. Yes, sir. May I present that after I have filed this data tomorrow morning?

Senator KING. Yes. I am not asking that you do it now.

Senator BARKLEY. Was the Darrow report made a part of the record?

Senator KING. No, it has not been. It is too voluminous.

Senator BARKLEY. I suggest that we recess until tomorrow morning at 10 o'clock.

Senator KING. The committee will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 4:40 p. m., the committee adjourned until 10 a. m., Thursday, Apr. 4, 1935, at the Finance Committee room.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

THURSDAY, APRIL 4, 1935

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:05 a. m. in the Finance Committee room, Senate Office Building, Senator Pat Harrison, chairman, presiding.

Present: Senators Harrison (chairman), King, George, Barkley, Costigan, Lonergan, Black, Gerry, Couzens, Metcalf, and Capper.

Senator KING. The committee will be in order. You may resume, Mr. Mason.

STATEMENT OF LOWELL MASON—Resumed

Mr. MASON. I would like to read into the record, if I may, an excerpt from Gospel of Fascism by Kirton Varley, who, I believe, sets himself up to be the founder of the theory of the corporative state, and in discussing the method of bringing fascism to this country, Mr. Varley makes some suggestions which seem to find a parallel in some of the operations of the N. R. A.

On page 52 of his Gospel of Fascism, Mr. Varley says:

> No attempt must be made to change the "form" of government in the United States. It is possible to achieve a corporative or institutional new state without that. In fact, it is the only practical way to do it. There are too many foreigners here and far too much foreign and radical thought. A change in our form of government would have to satisfy all this; and in the wrangle bloody chaos might result. The plain people of the United States—men, women, and children—have to be taken care of whether they are politically competent to do so for themselves or not. Most of them are not. They must not be disturbed in their present acceptance of authority. We are in no danger by war or revolution, nor have we a Mussolini to run things for us, nor a military high command to support a dictatorship.

Under the suggestions of the platform he states:

> (1) *Organize corporations.*—The framework for corporations already exists in our chambers of commerce. Every interest that has already organized an association of its members is a potential corporation. Many of them already have political offices or agents that keep in contact with the lobbies and the legislature and scrutinize the legislative bills before they are passed to see that their interests are not jeopardized.

On page 54 he states:

> The following steps then can be taken. Study Italian practice in organizing the corporations and profit by the experience gained there. Organize the industrial organizations under the N. R. A. administration into guilds with the same end in view.

I might say in that connection that the Italian Fascist organization has 22 principal corporations, which would correspond roughtly to 12

divisions which N. R. A. has, and that the guilds here correspond to our code authorities. They have a smaller number than we have. Ours are approximately five or six hundred codes and guilds, and they have a smaller grouping of them.

Senator KING. It is your intention in connection with this matter to show, I assume, a sort of a parallel or relationship between the N. R. A. and the Fascist corporative state operations?

Mr. MASON. Yes, sir; they are both handled on the same lines. Mr. Mussolini says that he has taken his Fascist state from our industrial system and he has incorporated it also into the political state. The founders of Fascism in this country believe that we should first complete our industrial Fascism, have the Government control of industry through N. R. A. as the first step, in other words, we should not have a march on Washington such as they had on Rome, nor should we have the Beer Hall Putsch such as they had in Germany, but that the whole thing can be accomplished through the N. R. A. organization, so that we can have a regimentation on industry not only for the 19,000,000 men who have their wages set by legislation as it is now——

Senator KING (interrupting). That is, by codes?

Mr. MASON. Yes; according to the theory of the N. R. A. and the Fascist theory, that is legislation, the law of the land, they send men to jail or fine them or put them out of business by refusing to give them the "blue eagle" if they disobey the law, which is far more effective, Senator, than the castor-oil treatment which is given in Italy in making men line up with the regimentation.

Senator KING. By the way, interrupting you, if I may, does the N. R. A. still support the "blue eagle", and regard it as an implement, and do the codes affect those who do not employ the "blue eagle"?

Mr. MASON. In many of the codes it has lost its effect, but it has complete control of life and death over a great many. In fact, every industry which is integrated, so that it can police itself, a man cannot operate unless he has the "blue eagle" and the insignia of the code.

Of course, the word "chiseler" has lost its force, It is a good deal like the word "scofflaw." It has lost its force. It means now that a man will give you something at a fair profit to himself and give it to you cheaper than the price which is fixed not by the codes but by the industry operating under the codes.

We have in the motion picture code a provision that the grievance boards may take away the right of a man to buy his product if he has his "blue eagle" taken away from him, and, of course, the retail trade is just the reverse of that. There the small merchant or all of the merchants and all of the retailers will, rather than quarrel about the "blue eagle", will only buy from a manufacturer who has the "blue-eagle" label, so we have it coming both ways. It is a very effective boycott in any industry which is integrated. The consumer has no protection whatsoever against that boycott in the integrated industries.

Senator KING. Proceed with your thesis.

Mr. MASON. I would like now, Senator, to get into the record excerpts from the Darrow Board report and just comment briefly on each one of the industries which came under our scrutiny.

Senator KING. May I ask whether you have prepared a synopsis of the Darrow report?

Mr. MASON. I have just a few page numbers of items, Senator, and it will only take one or two sentences from each of these pages to give a brief résumé of the results of our labors.

I covered yesterday in my statement the refusal of the Steel Code Authority to grant the Government the right to examine their own reports, and I shall not take up time on that, but I would like to call attention of the committee to one very illustrative example of a small business man in the steel industry. Mr. Otto Swanstrom of Duluth, Minn., was originally a blacksmith who had invented an improvement in horseshoes, and later when the automobile came in, he proceeded to make tools and small parts for autos.

In 1918 he had a concession from the United States Steel Corporation, which is referred to as the Corporation, of $5 a ton on his fictitious freight charges, but under the code this $5 rebate from his fictitious freight charge was taken away from him, and in consequence thereof he had to shut down his business. He employed a great many men for a small business, he had an investment of around $160,000 to $200,000 in this place up in Duluth, and he was receiving his steel from a place a mile and a half away, but it was necessary for him when the code went into effect, to pay for his steel as if it had been shipped from Chicago.

Mr. Swanstrom spent a good many months down here trying to get some relief from that situation, and was unable to do so. After the Darrow report was filed exposing the condition, and using Swanstrom as a specific case, the steel group in their new code put Duluth as a basing point for material which he wanted to buy, but raised the base price so that he had to pay exactly the same amount anyway, so he has, of course, received no benefit from that.

The ice industry which we examined was perhaps one of the most flagrant illustrations of limitations of new enterprises. Many men who sought to go into this business, were precluded from entering it, and while the printed set-up of the code would indicate that all of these cases were reviewed by N. R. A., as a matter of fact, the practical way they worked out was that the industry in the particular community decided whether or not they should have a competitor, and the application of this particular man, who testified before us, was referred to a committee of five of the large manufacturers of ice in his community, and they voted against his receiving permission to build this plant.

Senator KING. Suppose that he had proceeded and built the plant, what would have been the penalty?

Mr. MASON. He would have been arrested and indicted and probably placed in jail. He was a small business man and probably would not be able to employ a lawyer to come to Washington. It would cost him more, perhaps, than the total investment, to carry the case on through all the way through the local committee and the code authority and up to Washington.

Senator KING. As the code was interpreted and enforced, he would have been subject to prosecution?

Mr. MASON. Yes; he would.

Senator KING. If he had gone ahead and constructed the plant?

Mr. MASON. Yes.

Senator KING. The code authorities claimed that they had the right to refuse to permit him to construct a plant to manufacture and sell ice?

Mr. MASON. That is correct. This case, of course, is different from the *New State Ice case* in Kansas, because there they tried to set up the industry as a public utility and have a public body pass on the right of a man to go into the industry, but here it was his competitor who passed on the right of the man to go into the industry, and they quite likely said in their report, or they did not hesitate to say in their findings:

Any increase in production of flake ice would be further used in attempted competition with the product of existing ice plants.

Of course this was drafted by the men who owned and operated the existing ice plants.

Senator KING. Who prepared the ice code, if the Darrow committee ascertained that fact?

Mr. MASON. I do not recollect it at the moment.

Senator KING. Do you recall whether it was prepared by persons who were——

Mr. MASON (interrupting). It was prepared by those already in the business. There is no question about that. Because they put in there this prohibition against anyone coming in and competing against them.

Senator KING. And were they the ones who formulated the code?

Mr. MASON. They were the ones who formulated the code.

Senator KING. And any person who desired to embark in the ice business would have to appeal to ice producers who operated the code, for permission?

Mr. MASON. That is the way it worked out. Of course, they had a provision in their code that it would be subject to the approval or disapproval of the Administrator, but we found no case that we had where it was never possible to get the approval of the Administrator if the group that were operating the ice plants down there voted against it.

I might say in this particular case, after we had received this complaint and were passing on it, within 48 hours this particular gentleman received an order permitting him to build his ice plant.

Senator KING. That was after the Darrow report?

Mr. MASON. After we had received the evidence. In the ice business, too, Senator, the large integrated companies got together in cities and printed up placards setting the price at which the retailer or peddler could sell his ice. We had the labor unions down complaining about that, because it put many of these small peddlers out of business, and with the competition of the automatic iceboxes, they were just simply cutting off their own heads, just to try and hang on to a certain amount of business for themselves; that is, the monopoly. They were really strangling their own industry.

In the Chicago situation, before a small peddler could get his supplies from a manufacturer, he had to sign a statement that he would charge a certain price which was not set. It was not set by the code, but it was set under color of authority from the code, and if he sold ice for less than that price, he would be unable to buy any more ice.

The Icemen's Union of Chicago and many of the small dealers appeared before the Board and complained about this ice code.

In the bituminous coal code, the Darrow Board charged malfeasance and misfeasance in office.

Senator KING. Upon the part of whom?

Mr. MASON. Upon the part of the code authorities. I do not want to rehash that case. It was gone over pretty thoroughly at that time, but I want to call it to the committee's attention to illustrate the fact that when you have industry managing itself, it ignores entirely the mandates of public conscience. Here was a report from a governmental body demanding the removal of a code authority.

Senator KING. What governmental body?

Mr. MASON. The Darrow Board demanded the removal and recommended to the President that they be immediately removed, and made specific charges first of oppression of small enterprises by price-fixing without regard to grades of coal.

The Administrator claiming that low prices were the weapons of monopolies, is wrong. In this case it was the high price that was used to put out the small producer of bituminous coal.

This particular man did not have the machinery and the equipment to wash his coal. He had always employed and he kept in continuous employment, some 600 miners for many years, but he sold the coal, although he paid them the regular rate, he sold his coal under the market price because it was unwashed and because it had a higher sulphur content, as I recollect, but he had to sell it at less than the regular price of standard coal because of that condition.

When the code authority got hold of this situation and declared a price emergency, they set the floor price so high that this man of course could not sell his coal. When the railroads and the other industries were to buy coal, they wanted to get the very best grade they could at that price. The day the code went into effect, he shut down and has never been opened since. I understand that last week he received an order for some coal which is the first business I have heard of him getting since the code went into effect.

That was denied in the answer of General Johnson in rather an incomplete way, but our charge of the use of the offices of the code authorities to attract business from railroads was never denied.

I was rather amused that the committee yesterday received a long telegram from a group of code authorities urging this committee to instantly and hastily pass upon the revival of N. R. A., because we found in our investigation in the Darrow Board, all down the line, the code authorities using their power to attract business to their own companies either through information that they receive in the confidential way, or through fixing prices which fitted into their economic set-up and which would work to the disadvantage of men who were not on the code authority or, as we charged in the bituminous case, they met with the railroads and agreed that the code price should be a certain price less than the public price, and then these code authority members got all of the railroad business.

Naturally, code authorities when they can have that power, are going to swamp this committee with telegrams and wires, and the inarticulate mass of people who are being injured by these codes won't send in these telegrams and wires to the committee asking them to view their side of the case.

Senator KING. You mean the consuming public?

Mr. MASON. The consuming public; yes, sir.

Senator KING. Did it appear from the testimony before the Darrow committee that the code authorities in the bituminous coal industry were all or substantially all producers of coal?

Mr. MASON. Yes; they were. Out of 8 on 1 code authority, I think 7 were the large producers, through captive mines or else owned by—in the western Pennsylvania area they were controlled by—the Mellon interests, and that was the area where we asked for the removal of the code authority for malfeasance in office.

Senator KING. Were they removed?

Mr. MASON. They were not removed and they are still on. One man resigned from the code authority but he put one of his employees in his place, as I understand.

Senator KING. Were there any representatives of the consumers on the code authority?

Mr. MASON. No, Senator.

Senator KING. Generally speaking, from your investigation of the codes, were the consumers represented by the code?

Mr. MASON. Senator, I would say that in no case did I ever find a situation where the consumer was ever represented anywhere. The Consumers' Advisory Board had a voice but a very feeble voice in protesting——

Senator KING (interrupting). I am speaking in the codes themselves.

Mr. MASON. In the codes themselves, the consumers were never represented.

Senator KING. Was labor represented on the codes?

Mr. MASON. No, Senator. Except in the textile industry, I do not know of one code that has a labor representative on it.

Senator KING. The Darrow commission then, in its investigations found that the code authority consisted of representatives of the industry which was brought under the code, that the consumers were not represented on the code authority or in the code authority, nor was labor?

Mr. MASON. That is correct, Senator.

Senator KING. So that the codes were administered by persons in the industry whose interest it was to fix prices, or at any rate to prevent competition and secure a monopolistic control of their respective industries?

Mr. MASON. And on top of that, Senator, we do not even have the control that the Fascists have of an independent court where these questions can be taken and adjudicated.

Senator KING. Did you find in any of the investigations made where it was claimed abuses had resulted from the code authorities and the President of the United States had intervened or had been appealed to or that he had passed upon any of the complaints?

Mr. MASON. Yes, Senator. In the cement code. The cement group tried to prevent the building of a new 2½-million-dollar plant in Pennsylvania which would have given employment to a great many hundreds of people, and the cement group appealed to the President and asked him to prevent the building of that plant, which he could have done under the code, and he refused to do it, and the plant, I understand will shortly be in operation.

The owner of that plant came to me the other day and asked what he should do with reference to prices. As you may recollect, Secretary Ickes called attention to the fact that the price in cement is away out of line with what a fair profit would be including raises in pay, and this man has a very efficient plant and he can give employment to a

lot of people, but he is afraid if he charges just a fair profit for his product when he sells it to the United States Government to build roads and bridges and dams, that he will be penalized by being put out of business, or being boycotted by the Government, so that instead of being able to furnish the taxpayers 10 bags of cement he will just have to give them 9 bags and charge them for 10 if he wants to stay in business or if he wants to go into business.

Senator, may I just get back to bituminous coal——

Senator BLACK (interrupting). Just a moment before you leave that. Has he any authenticity for his fear. Is there anything that you know of that has been done or said by anybody in the Government, and if so, in what department of the Government, that would cause him to believe that he could not sell his cement cheaper?

Mr. MASON. Yes; he has a very valid ground for his fear.

Senator BLACK. What is it? Is it based upon anything but rumor?

Mr. MASON. No; it is based upon facts.

Senator BLACK. I think it ought to go in the record.

Mr. MASON. I would rather not give his name; I will if the committee insists. He is in that position where he does not know whether he is going to be put out of business or not. If the committee wants it, I will give.

Senator COUZENS. Have you any documentary evidence to sustain that?

Mr. MASON. I have not, but he has. He came as a witness before our committee, and I am sure that he would be willing to come here. I will give the committee his name if——

Senator BLACK (interrupting). May I ask the Senator if he thinks it is better to get the man here?

Senator KING. Perhaps that would be better.

Senator COUZENS. Let him bring the documentary evidence and turn it over to the committee.

Senator BLACK. I think that would be better.

Mr. MASON. He has appeared before the Secretary of the Interior several times. The grounds for his fear, Senator, are these: While his plant was being built he had been selling cement from a plant close by under his brand, and they threatened to take away the Blue Eagle from him on that ground.

Senator BLACK. Who did?

Mr. MASON. Well, they did. They stopped him from selling this cement to the Government, and upon direct appeal to Mr. Ickes, he was allowed to continue supplying cement. But that is the ground for his fear, as to whether or not he will be boycotted and won't be able to go into the cement business unless he charges the exorbitant prices which are now prevailing in that industry.

Senator COUZENS. Do you mean us to understand from that statement, that there was no agreement among the cement people before N. R. A.?

Mr. MASON. Undoubtedly there was, Senator.

Senator COUZENS. In what respect did N. R. A. make it different, if there was an agreement before N. R. A. to fix prices?

Mr. MASON. Before, it was illegal and now they have the immunity from criminal prosecution and from the triple-damage suits. They had that fear over their heads.

Senator COUZENS. But the result was the same as far as the buying public was concerned, was it not?

Mr. MASON. No; taking that fear away has raised the price of cement. I cannot give you the exact figures, but considerably; at least 20 or 25 percent.

Senator COUZENS. It has raised it?

Mr. MASON. Yes.

Senator COUZENS. They could have done it before if they had agreed among themselves to have raised the price, because they were agreeing among themselves previously as to prices.

Mr. MASON. Yes; they had Senator, but they did not, because of that mental hazard. They knew they could be sued civilly, or prosecuted criminally. Under the Hoover administration there were very few prosecutions.

Senator COUZENS. Under what administration were there any?

Mr. MASON. Under the Wilson administration.

Senator COUZENS. That is too far back to remember. I do not remember of any recent prosecutions under the antitrust laws.

Mr. MASON. And they used that as an argument in the depression, that the antitrust laws had stiffled industry. That is a fallacy. Because it has never had a fair chance in enforcement.

Senator KING. Proceed.

Mr. MASON. May I come back to the bituminous coal?

Senator KING. Where you left off.

Mr. MASON. So that the charge by the Darrow Board was that these members should be removed from office because of:

(*a*) Oppression of small enterprises by price fixing without regard to grades of coal;

(*b*) Use of office to attract business from railroads; and

(*c*) Discrimination in retail prices to railroads.

I might say that the administrator in answering that, answered A. C. but did not deny that the code authorities had used their office to attract coal business from railroads, and I assume that you will get many wires from code authorities requesting the continuation of N. R. A.

The Attorney General's office made an investigation of this use of public office—if you call a code authority a public office—to get business for themselves. Mr. Ryder of the antitrust division made a report, but that report has been pigeonholed. I assume that this committee with the power of subpena, could ascertain what was done with it.

Senator KING. To whom was it made?

Mr. MASON. I think to Mr. Bell of the antitrust department of the Attorney General's office.

Senator KING. Was it given to the N. R. A.?

Mr. MASON. As I understand, the request came to N. R. A. that the report should not be made public.

Senator KING. Did the Darrow committee see the report?

Mr. MASON. No; I have just received that information in a roundabout channel, but I am sure if you subpena Mr. Ryder, that you will be able to find that report.

I would like to just read one paragraph from the Darrow Board, not commenting now upon it, of the average cost of food.

Senator KING. Reading from the report on the bituminous coal industry?

Mr. MASON. On the bituminous coal industry report:

According to the bulletins of the Department of Labor, taking the average cost of all foods in 1913 as 100, their cost in April, 1933, was 90, and in April, 1934, it was 107. Fifty-one cities showed in this year an advance in food prices from 10 to 27 percent. Rents, fuel, lights, house furnishings and other items showed at the end of the year, after the codes had begun to operate, a marked upward tendency.

Senator KING. Was that not expected and was it not desired by some who were strong proponents of codes?

Mr. MASON. Yes, Senator; but the difficulty was that while the cost of living increased under the codes, wages did not rise in accordance with it. That was the condition, and that was the contention of the Darrow report. I am just reading from the Darrow report on that. I have no opinion of my own on that particular subject.

The fact is generally overlooked that the consumers' sole barrier to a great deal of exploitation by monopoly is the so-called "chiseler." In your industries which are not integrated, we found that men who would be called chiselers came before the Darrow report and were chiselers in price, but all of them had signed the President's Reemployment Agreement and all of them were paying the minimum wage.

Senator KING. Complying with the provisions with respect to hours and labor?

Mr. MASON. Yes, sir. Out of 3,300 which we had, we only had three or four involving the question of wages at all. One of those was a shipbuilder out on the Pacific coast who during the depression had been paying his regular union rate, but when the shipbuilding code went into effect, the blanket raise struck him and did not affect the men who had cut down and had not been paying an honest living wage during the depression.

That was one of the wage complaints we had. It worked a great deal of hardship in cases similar to that, but what complaints we did have about wages were generally from men who wanted to have the wages raised rather than lowered.

You take a man working in an area of low differential, he wanted to have his competitor who was up in the northern high differential, he wanted to have the wages raised against him.

I do not think that we had over half a dozen complaints on the question of wages.

Senator KING. While it may be diverting you, can you tell us in a word, generally, what those other 3,300 complaints were? What kind did they cover?

Mr. MASON. All of them were based upon monopolistic features which had been forced into their particular industry through operation of the code. We had some complaints which had to do with troubles which existed before the code, but those were few. We had that in the electrical industry, but those arose out of patent monopoly questions, and we did not do anything with reference to those.

The greatest burden of our complaint was on the question of the monopolistic industries being able to set a price, a floor price, so high for their advertised products that it simply foreclosed the small manufacturer from getting any market at all for his unknown product, which in most cases was just as good. Where the Federal Electric Co. would manufacture a lamp at a cost of 12 units because of their high cost and research laboratory and high executives in advertising,

the small lamp manufacturer could manufacture the same lamp for 8 units, but, of course, he could not find the market unless he was able to sell at a price that was based upon that cost and a fair profit to himself.

That was so in the rubber-heel industry. The small manufacturers there were very much, if you will permit me to say, down at the heel because the code prevented them from competing with well-known manufacturers who were selling an advertised brand and put the floor price so high that these men could not find a market.

Senator COUZENS. What have you to say, Mr. Mason, with respect to institutions or corporations or what not, creating a market through advertising products, and then some chiseler, if you please, coming in and taking advantage of the market that the other fellow created? Is there any defense for that, or have you any defense for that?

Mr. MASON. I have no defense for that if he uses the name. That is covered already in Federal Trade Commission decisions.

Senator COUZENS. I am not talking about using the name. I am talking about using the article, whether it is a trade-marked name, or whether it has no trade mark.

Mr. MASON. I think the only protection to the consumer will be to allow anyone entering any enterprise that he may, except with regard to the patent laws; and if one creates a market, I do not believe that there should be any restriction unless it is something subject to patent, which would give him a monopoly in that. I doubt if we would have any progress, Senator, if we would do that.

Senator COUZENS. I am not talking about fixing prices. I believe in very strict competitive conditions, but I hardly see the justification for one institution creating a market through energy and effort and advertising, while another man sits by, and then after the market was created, for another man to slip in and chisel in after the market is created. I do not know how you can overcome it, but it is a condition.

Mr. MASON. It is a condition; but I am afraid, as long as we have the capitalistic system, we will have to operate under that, and perhaps it is the only protection the consumer will have.

Senator KING. This is not a parallel; but Mr. Ford made the cheap automobile and showed the uses of it and the importance of it, and undoubtedly others—and I will not mention the companies—took advantage of the market which he created and the sentiment which was developed throughout the country and began to make cheap automobiles and probably encroached a little upon the field which he had formerly occupied. I do not know that that is an apt illustration.

Mr. MASON. Competition is the life of trade.

Senator BLACK. Mr. Mason, may I ask if the patent laws and the copyright laws do not give a large measure of protection if a man or a corporation creates a market for a named article? They get rather extensive protection through those laws, do they not?

Mr. MASON. They do, yes, sir.

Senator BLACK. And, as I gather it, it is your idea that unless they create a market for a certain particular commodity with a trade mark or a patent, that the only thing to do is to leave the market completely open for anyone else who wanted to manufacture the general commodity?

Mr. MASON. That is correct, Senator.

Senator BLACK. Can you think of any way that you could go any further, with fairness, either to the business or to the consumer?

Mr. MASON. Not under our system. I am a strong believer in the system that we have if we can just save it, and under our system there is nothing we can do about it.

I think perhaps the Senator has in mind a case where a patent on one article is utilized to hold a monopoly in other articles, which are not patented. The Supreme Court in the bathtub case has held that that is an illegal restraint of trade.

In the boot and shoe industry, the Darrow Board in its investigation, of course, did not go into labor questions at all, the Board was only appointed to investigate monopolistic practices, but in the boot-and-shoe industry——

Senator KING (interrupting). That was the authority given you by the President, was it not?

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

In the boot-and-shoe industry we found that under the code where the practice had been to give a 5-percent discount on payments within 30 days, the purpose being to offer a premium for prompt payment, as competition became sharper, the discount became 6 and 7 percent, but the 30-day payment was practically followed in all cases. When the code went into effect, the provision was put in the boot and shoe code as follows:

> Selling wholesalers, department stores, retailers, and others in the trade on a net basis or with cash discounts is permissible, but in no case shall a discount in excess of 5 percent be allowed, said discounts to be allowed for the payment of bills within 30 days, 15 days additional west of the Rocky Mountains.

This is only illustrative of just one of the smaller monopolistic tendencies in codes, as far as credit was concerned. We found that where the general trade practice was to follow the 30-day provisions, that when they put a provision in the code that they could bill them either 30 days from delivery or date of shipment, the large and well-financed companies would take advantage of that and give a longer period of time. The leather manufacturers were very strict on their credit requirements and we found the small boot and shoe manufacturer having to pay cash for his leather, and then required under the code that he give a long period of time at the other end of his factory when he shipped his goods out.

Cement, I have commented upon, but I would like to say——

Senator KING (interposing). May I interrupt you? Did you find from your investigations into the boot-and-shoe industry that there was more or less of a monopoly, or that the tendency was toward monopolistic control of that industry?

Mr. MASON. The tendency was toward monopolistic control. The boot-and-shoe industry had a rather interesting situation which showed that even the small industries, under our system, were trying to look out for themselves as best they can, and shows that we must either have competition or else we must turn everything over to the Government.

Their code provided that there should be only one yearly exhibition, which put the eastern exhibition group out of business and put the western group out of business, and three or four others, and we had each of these small exhibitor groups come down and ask to have

the code amended just by adding the name of their own exhibition company; in other words, they did not care about anyone else, but they wanted to get up to the trough, too, and be the only ones who were allowed to have an exhibition of shoes.

The cement industry, while it does not provide for basing points directly in the code, is so worded that the monopolistic condition which existed prior has been strengthened and solidified. As I say, the prices perhaps were agreed surreptitiously before, but under the code they have been raised tremendously, and the cement group now being incorporated into the Cement Institute, and that having been given legal recognition, the bigger companies are able to control the output and price of cement.

Senator KING. Did you find that the process made by the Government, or the representatives of the Government, such as the Secretary of the Interior, had had any effect upon the cement prices established by the codes?

Mr. MASON. None whatsoever, Senator. They have maintained collusive bidding all the way through——

Senator BARKLEY (interrupting). They did that long before any code was ever thought of? Even back in 1930 when we tried to regulate it by the refusal to put a tariff on cement?

Mr. MASON. That is correct.

Senator BARKLEY. So that the codes have not had any effect on the cement business so far as fixing uniform prices is concerned?

Mr. MASON. Except that it has removed that mental hazard of the triple damage suits and the criminal prosecution, and that has been reflected in a raise in prices of 25 or 30 percent.

Senator BARKLEY. In what criminal prosecutions did they appear before the code? None was ever instituted, was it?

Mr. MASON. That is a criticism of the administration of the anti-trust laws rather than the laws themselves.

Senator BARKLEY. Of course, everybody knows you could not get a bid from one cement company that was not the same as any other cement company?

Mr. MASON. No; Senator, there was competition in the cement industry to a great extent.

Senator BARKLEY. It must have been prior to 1930?

Mr. MASON. Yes; it was prior to 1930, a great deal of competition in cement, but there is none now.

Senator COUZENS. Did the diminution in hours or the raise in wages cause the raise in price?

Mr. MASON. I am not competent to answer anything about wages.

Senator COUZENS. Is it not a little unfair to criticize some one element without knowing the other elements?

Mr. MASON. I am not qualified to answer any labor questions at all. I am only competent to answer on the subjects I studied.

I will say, however, that before the operation of the code we had no limitation of production and no limitation of new enterprises, and that, of course, kept the price down. The threat, if the price became too high, of having new enterprises coming in and coming up to the trough.

Senator BLACK. Do they now have a limitation of production provided for in the code by agreement?

Mr. MASON. Yes; they have, Senator. It has never been put into effect. I do not know whether it is through fear of public pressure or what the Senate may do, but they have never put it into effect, but they have the machinery to put the allocation there, in other words, they have the machinery in the cement code to create the cartel similar to the ones they have in Germany, the cartels in coal, steel, and phosphorous, which they have in Germany. Allocation and limitation of production.

Senator BLACK. So that that code, like many others, makes it legal now to agree on the amount to be produced and create a scarcity, if necessary?

Mr. MASON. Yes, sir. They tried to get together on allocation, but one or two of the small cement companies complained so bitterly that they were not able to do it.

Senator BLACK. And it also makes it legal to fix a stage price?

Mr. MASON. The cement code does not mention the price, but they have the machinery in their code to do that. So many things are left out of the code, but the authority is given to the code authority to pass minutes, and these minutes will control various monopolistic phases which do not show on the record at all.

Senator BLACK. Is there any provision in the code, or does the N. R. A. have any rule which authorizes it if such production is produced or the prices stabilized, to investigate to see what profits are being made?

Mr. MASON. No, Senator. In some codes they can investigate, but in many of them they cannot. You cannot in the steel code. The Federal Trade Commission tried to, and Mr. Eastman offered to agree to make loans to the railroads if they were to permit the Government to ascertain the profit, but there is not authority at all. The steel code sets prices absolutely themselves without any supervision in the Government.

Senator GEORGE. In how many of the industries have they actually made the various allocations?

Mr. MASON. As far as the record goes, Senator——

Senator GEORGE (interrupting). How many did you find in your investigation? In the Darrow investigation did you find any industry where they had actually allotted to various units the amounts they could produce?

Mr. MASON. No; the only one was in oil——

Senator GEORGE (interrupting). They did in the lumber for a while, and then abandoned it, I think?

Mr. MASON. Price fixing has been abandoned, but not the limitation of production. They are still operating under the limitation of production.

Senator GEORGE. Yes; but the allotments were, I think, very largely abandoned or disregarded. I do not know whether they are in force or not.

Mr. MASON. They have secret allotments in many of the tightly integrated industries that never show on the record.

Senator BLACK. There is in the ice code a provision prohibiting any new business from being set up.

Mr. MASON. Oh, yes; and many have been officially prohibited by N. R. A. from going into the business.

Senator BLACK. I have a letter this morning that that code is still in effect, and that it requires a permit to put up a new ice plant, and I have the figures given me by the N. R. A. They have had a total of 360 applications up to February 27, and 43 have been denied. Did you look into the question as to this ice code?

Mr. MASON. Yes, Senator; and we had several complaints before us on it. One of them who was granted a permit after we had heard the case, and reported on it, and one, I believe, was in my office the other day still trying to get permission to build an ice plant. He had all of his own savings and his wife's savings and three or four friends' savings wrapped up in this thing, and for 2 years he had been trying to get permission to build, and had not yet. In fact, he never will.

Senator BLACK. They require a certificate of convenience and necessity, it is stated in this letter. In your judgment, from your study, even if we are going to put ice as a public utility and require certificates of convenience and necessity, should that be handled by the N. R. A. or by the State or county or some Federal agency?

Mr. MASON. Of course, Senator, I do not believe in limitation at all.

Senator BLACK. Assuming that we are going to do it. I understood you to say a while ago that this Government had gone to that extent in some business, but that they had not protected the people like the Fascist government had.

Mr. MASON. Yes.

Senator BLACK. What did you mean by that?

Mr. MASON. The Fascist government has an independent tribunal which passes upon the validity of the code, and while the codes may be drafted—the cartels which correspond to our codes—may be drafted by the industry and agreed to by them, if any small business man wishes to complain against the abuse of economic power, using their words, he can file his case before the court in Charlottenberg, the cartel courts, and his case is tried by a government official, one who has no financial interest.

Of course, in the ice case here, and in all the codes here, the code authorities all have financial interest in the cases they are dealing with, and while most of the codes provide that the particular man who sits on the code authority shall not vote on a case which affects his own company, nevertheless, he is sitting there with the rest of the code authority and they are all his friends.

Senator BLACK. And he would like to know what anybody wants to do, too.

Mr. MASON. Yes.

Senator BLACK. These 43 that have been denied; do you know whether or not the N. R. A. made any investigation of the price at which ice was being sold to the consumers in that particular district, and make any effort to regulate that price and get it down to a normal basis and a fair basis to the public?

Mr. MASON. No, Senator; that is impossible, because after working 2 years on the question, they admit that they can not arrive at any fair accounting for cost and price.

Senator BLACK. So that the result is that if someone wants to put up an ice business, as does the man who wrote me this letter and who said that he had invested $8,000, and they have a right to decline his request to put up an ice business, but they do not make any effort

whatever to find out whether the public can get its ice at a fair price, and whether competition is needed in order to reduce so that they would not make an exorbitant profit?

Mr. MASON. That is a very good statement of just the situation in the ice business and in many others too, Senator, where we have limitation of production.

Senator BLACK. If we are going to have certificates of convenience and necessity like we have in reference to the railroads or anything else, do you believe that we can simply depend upon the philanthropy or patriotism of the men engaged in business to sell their goods and commodities at a reasonable rate?

Mr. MASON. We cannot do that at all. We will have to have an essentially controlled economy if we are going to do that. We will have to go either to the Soviet or to Fascism for our form if we are going to issue certificates of convenience and necessity in any of the so-called "commercial lines."

Senator GEORGE. Do you recall any of the specific cases of an application to install new ice plants to be operated in conjunction or at least through the use of power generated by Crisp County, Ga.?

Mr. MASON. That case did not come before us.

Senator GEORGE. That is the only county-owned power plant in the United States. Did you have that case?

Mr. MASON. No, Senator; that case did not come before the Darrow Board.

Senator KING. Senator Black, did you want to put something in the record, any of that correspondence or those figures?

Senator BLACK. I have the letter here if you would like to have it in. I would like to state that this was called to my attention by a firm in Montgomery, Ala., which wanted to put up an ice plant, and the code authority notified them that they must get a certificate of convenience and necessity.

Senator KING. From whom?

Senator BLACK. From the N. R. A. I was under the impression from the evidence we had that that had been abandoned, so I wrote to Mr. Richberg, and here I have the letter from Mr. L. C. Marshall, who states that the code provision has not been abandoned. He quotes the code provision and says that they must get certificates of convenience and necessity. This applicant still is seeking to put up the ice plant, and he gives the figures with reference to the number of applications made and the number of applications denied.

The CHAIRMAN. Why not put that letter into the record?

Senator BLACK. I will be very glad to do it. It is a letter from L. C. Marshall, executive secretary of the National Industrial Recovery Board addressed to me under date of April 1.

(The same is as follows:)

APRIL 1, 1935.

Hon. HUGO L. BLACK,
United States Senate, Washington, D. C.

MY DEAR SENATOR BLACK: Mr. Donald R. Richberg has directed me to reply to your letter of March 25, which refers to article XI of the ice code, the title of which is "Control of production." For ready reference, I am quoting this article below:

"If at any time an individual, firm, corporation, or partnership, or other form of enterprise, desires to establish additional ice production, storage, or tonnage in any given territory, said party must first establish to the satisfaction of the

administrator that public necessity and convenience require such additional ice-making capacity, storage, or production."

This article is still in effect and is being administered. Its administration is being closely watched because the problem is regarded as (*a*) something which must be thus watched, in the public interest and (*b*) an experimental case which should throw light on similar proposals in other fields.

Thus far, a somewhat detailed report by the deputy administrator handling the code is available, and I enclose a copy. The deputy is assembling further material, as is also the Division of Research and Planning. Furthermore, a system of more detailed reporting by National Recovery Administration officials on the operation of the plan is being worked out.

The report of the deputy administrator is now before the National Industrial Recovery Board but the Board has deferred action until further information is made available.

It may interest you to know that from the State of Alabama three applications have been received from individuals desiring to construct ice plants in that State. Two of these applications were withdrawn by the applicants and the third was granted by this administration. Thus, no application to construct an ice plant in the State of Alabama has been denied as yet. In this connection, I refer you to exhibit no. 4 in the attached report. You will note that a total of 360 applications had been handled up to and including February 27, 1935, and of this total, only 43 had been denied.

In the event investigation discloses a probability that the application should be denied, the present procedure is to notify the applicant of the finding of fact. This is done with the thought in mind that he may wish to withdraw his application inasmuch as the facts seem to indicate that the enterprise would not be successful and therefore a source of financial loss to the applicant; as well as a source of injury to others in his industrial area—all without compensating gain to the public.

In most instances, the applicant is not able to make as careful a survey as that made by this administration, and it would seem that we were doing him a very real service in bringing the facts to his attention.

Very truly yours,

L. C. MARSHALL,
Executive Secretary, National Industrial Recovery Board.

Senator BLACK. Since that has been put in, does the committee think it is advisable to put in the letter from Mr. De Jarnett and his attorney with reference to the ice code and their application?

The CHAIRMAN. Yes.

Senator BLACK. I will be glad to do that.

(The same are as follows:)

MARCH 22, 1935.

Senator HUGO BLACK,
Washington, D. C.

Started building ice factory this week having bought machinery, lumber, etc., representing investment of around $6,000. After consulting National Recovery Administration Administrator here and being told that he knew of no restriction on going into ice business here employing four men in erecting factory was visited yesterday by secretary of Ice Code of Birmingham was told that it would be necessary to have permit from Washington to operate new ice factory and that in his opinion such permit would not be granted in Montgomery as all available capacity here was greater than present demand. Believe all ice companies here are making a reasonable net profit on their investment. Four of the five ice companies here sell coal, including two trust companies. Am only asking that we have equal chance to make living. Any help that you can give us when National Recovery Act comes before Senate for renewal or advice that you can give me so that I may not be prosecuted for earnestly endeavoring to make a livelihood will be appreciated. What has become of free America? Paid over $19,000 in taxes last year leaving less than $2,000 for the two of us bookkeeper-manager-owners. This restriction looks like a monopoly to me. By endeavoring to conform to codes has almost wrecked many of we small business men. Copy to Senators Byrd, Glass, and Borah.

DE JARNETTE OIL & COAL CO.,
By L. L. DE JARNETT, *President.*

MONTGOMERY, ALA., *March 27, 1935.*

Senator HUGO BLACK,
Senate Office Building, Washington, D. C.

DEAR SIR: On March 22 our client, Mr. L. L. DeJarnette, of this city, wired you in connection with the National Recovery Administration restrictions on his going into the ice business here.

In January, Mr. DeJarnette consulted us relative to National Recovery Administration restrictions on his going into the ice business. We were rather amazed at the question ever being raised of whether or not a man could go into a business that had not been declared a public utility. However, we obtained a copy of the ice code and after going over it very carefully decided that the only questionable provision of this code was the one quoted in a letter recently received by Mr. DeJarnette from Mr. Williams, secretary of the ice code for Alabama, a copy of which we enclose herewith. However, as the code was an agreement between the icemen themselves and as we thought it impossible for the Federal Government, under our present Constitution, to make such a regulation as to purely intrastate business, we reached the conclusion that this provision merely applied to those concerns already in the ice business, that is, those who had formulated this code.

However, we were not content with accepting our own conclusion on this, but asked the National Recovery Administration administrator here if he knew of any such restriction. He stated that he had never heard of anything on this order. Upon reading article 11 of the ice code, you will note the ambiguity and also note that the last part of such article, without even a paragraph to break the thought, clearly applies only to those enterprises already engaged in the ice business.

Subsequent to this and relying upon the above interpretations, Mr. DeJarnette invested approximately $6,000, and employed four men, in erecting an ice plant. On March 21 he was visited by Mr. Williams, secretary of the ice code for Alabama, and informed that he could not proceed with the erection of his plant without a permit, and that from his knowledge of the granting of such permits, it was his opinion that Mr. DeJarnette would be unable to obtain one.

As the future of the National Recovery Administration is now before the Senate, we are taking this opportunity to object to something which we feel is unqualifiedly unconstitutional. It seems apparent that the small business man is being completely crushed and the large businesses are having all the advantages of monopolies. It is significant that at the time he issued his ultimatum Mr. Williams was accompanied by the local manager of a large ice and coal company.

In the present case it would work too great a hardship on Mr. DeJarnette to force him to carry the question to the Supreme Court of the United States when because of its patent and undeniable unconstitutionality it shall ultimately be held as such.

We are also writing to Senators Glass, Borah, Byrd, and one or two others, stating these facts to them.

We earnestly hope that you may be able to assist the cause Mr. DeJarnette represents while the National Recovery Act is before the Senate.

Very truly yours,

J. MAC JONES & J. RENDER THOMAS, Jr.
J. RENDER THOMAS, Jr.

CODE OF FAIR COMPETITION FOR THE ICE INDUSTRY,
COMMITTEE ON ARBITRATION AND APPEAL FOR ALABAMA,
Birmingham, Ala., March 22, 1935.

(Registered mail—return receipt requested.)

DEJARNETTE OIL CO.,
Montgomery, Ala.

GENTLEMEN: Confirming our conversation yesterday I am quoting you herein from article XI of the Code of Fair Competition for the Ice Industry:

"If at any time an individual, firm, corporation, or partnership, or other form of enterprise, desires to establish additional ice production, storage, or tonnage in any given territory, said party must first establish to the satisfaction of the Administrator that public necessity and convenience require such additional ice-making capacity, storage or production."

In the event you elect to proceed with the erection of an ice plant in Montgomery without securing the required permit, such action will be taken at your own peril.

The first step to be taken in securing a permit should be a written request to this office requesting a permit to erect an ice plant of the desired capacity and at the desired location. This request will be forwarded immediately to the proper authorities at Washington.

Very truly yours,

R. LANDIS WILLIAMS,
Secretary Committee of Arbitration and Appeal for Alabama.

Mr. MASON. The Darrow Board in its investigation of the lumber and timber products code found that there is—that is, at the time they made the investigation, a pretense of maintaining a reasonable balance between production and consumption, and a pretense of maintaining cost protection, and under this camouflage is erected an unbreakable monopoly of control of output, of sales output, and of the channels of trade, all directed for the advantage of the powerful and the further disability of the weak.

As in so many other instances, the code, which should have been for the protection of small enterprises and the advantage of the public, has been made an instrument to give privilege and multiply power with profits.

The Darrow report stated:

The code and the authority created by it, denied to the producer of lumber and timber commodities the right to decide how much he will produce, what price he will ask, or what persons he will regard as wholesalers or retailers. The code as the authority by welding all producers into an organization in which one central power determines how much or how little lumber shall be supplied to the people of the United States, the sales prices thereof, and the channels of trade through which it shall move to customers, permits monopoly or monopolistic practices in violation of the first proviso in section 3 (a) of the National Industrial Recovery Act.

There was a regulation in this lumber code which provides that wholesalers shall be given a discount of 8 percent for the operation of their business. This is put in obviously because the large manufacturers who control the code authority also had their own wholesale outlets, and in order to take all of that business away from these independent wholesalers, they were going to set their profit at 8 percent, which was so low that they could not operate, and as a consequence thereof, only the large industries would be able to engage in the wholesaling of lumber.

The CHAIRMAN. Was there a separate code for retailers of lumber?

Mr. MASON. Yes, sir; there was a separate code on that.

Under the color of the code, they established uniform delivery prices instead of f. o. b. mills. The limitation of production in the lumber code which still stands, on the basis that it was to conserve the forests of the United States, the natural resources, is merely a fantasy because as a matter of fact the forestry service has nothing to do and has no control over the limitation of production, and the limitation of production is merely an allocation which you mentioned, Senator Black, an allocation of business around to the various lumber-mill owners.

The CHAIRMAN. Before your committee investigated did you have any of the lumber authorities appear?

Mr. MASON. In all cases we sent out letters before hearings, for the code authorities, and practically in all cases the code authority appeared, and we allowed them to cross-examine all witnesses. We did that for our own protection so that some one would not come in with a false complaint, and we had quite a few false complaints, too.

The CHAIRMAN. That was true in the lumber code, was it?

Mr. MASON. I just do not recollect, Senator. I think our records show whether or not they showed up. We were running two hearings a day, and sometimes I would not be in. I do not think I was in trying that particular case.

The plumbing fixture case I called to the attention of the committee yesterday, where there is a limitation of selling only grade A products, which was in direct violation of the mandate of the Supreme Court in the *Trenton Potteries case*, which held that it was the limitation of competition which was illegal.

Evidently the plumbing group just took this mandate and changed the wording of it so as to provide for giving them immunity from prosecution under the antitrust laws, and they took the mandate of the Supreme Court in the *Trenton Potteries case* and said "You can do that" the very thing which the Supreme Court said you could not do in the *Trenton Potteries case*.

Senator KING. Did that interpretation militate against the interests of the small producers or against the interest of the public?

Mr. MASON. Against the interests of both, Senator. It absolutely prohibited the small producer of pottery in the Middle Western section from existing, because while you were allowed to export your grade B products, the freight differential to the coast was so high that only those on the coast were able to export and all the rest of them had to be broken—all of their grade B products, which was merely a scratch on them, had to be broken up in the plant, so that it placed that imposition on all of the industries which were located in the central part of the United States and who did not—the smaller ones—did not have any voice in the making of the code.

Senator BARKLEY. Can you furnish us a list of the small concerns that went out of business?

Mr. MASON. No, sir; I cannot.

Senator BARKLEY. Can you furnish the names of small concerns that went out of business as the result of the code?

Mr. MASON. Yes, sir; I could furnish you a lot of them if I get hold of our files. The files were turned over to N. R. A. We had 3,300, and I don't know how many of them went out of business.

Senator BARKLEY. Do you know how that number on that list compared with the number that had gone out of business from 1929 up to 1933?

Mr. MASON. No; I have not any idea, Senator.

Senator BARKLEY. You do not mean to leave the impression that nobody went out of business or closed up except as a result of the codes, whether it was pottery or any other type of business?

Mr. MASON. No, Senator. I think that is one of the great faults of N. R. A. It is trying to keep even the inefficient in business by placing the prices so high. We have had 20,000 concerns that have gone bankrupt every year even in our heyday, under the Coolidge administration. It is like trying to do it just as the snake sloughs off its own skin.

Where a concern cannot serve the public at a fair profit to itself, I think it should go out of business; and when you limit production and when you allocate business, and when you say that another man cannot come in competition against yourself, you create a stagnation; and I believe that N. R. A. under its present role has created that

stagnation. It has not been perhaps as efficient as they would like. If there was perhaps closer coordination, they would have been able to create a greater stagnation. They would have had a better N. R. A., which was like saying that they would have a better case of smallpox.

I am not criticizing the spirit of N. R. A., but I believe the limitation of production and the cartelizing of our channels of industry such as they have done in Russia, Germany, and Italy does not fit into our capitalistic scheme at all. I think it is very unhealthy. I think a great many businesses should go out business if they cannot serve the public and pay a fair wage, and we should not give them the protection which some of the big industries are now getting under N. R. A.

Senator COSTIGAN. How do you distinguish between the small businesses which in your judgment went out because of the N. R. A. and those which would normally have retired from the field under previous competitive conditions?

Mr. MASON. Well, Senator, my criticism and the criticism of the Darrow Board is not of the small businesses that have been put out of business or that any larger percentage have been put out of business, perhaps; but that you have created a false economy, you have created a false standard of living. The man who is in, the man who can hire the high-priced lawyer to come down to Washington, the man who can get close to the trough and get a code written which will protect his uneconomic business is the man that is going to survive under the present set-up. Steel, the number 11 code had one of their high-priced lawyers come down, and they are one of the few who have absolute price-fixing.

Senator COSTIGAN. My question was somewhat different than what you have apparently understood. You stated that a number of small businesses were driven out by the N. R. A.

Mr. MASON. Yes, sir.

Senator COSTIGAN. How do you distinguish between those and businesses which would have gone out under earlier competitive conditions, so that you are in a position to say that these particular businesses were driven out?

Mr. MASON. I can illustrate by an example. May I do that? I can give you one example just to illustrate the point. A man who operates a small coal mine with a high sulphur content. He pays union wages since he opened up many, many years ago, but he has to sell below the code prices—I mean before the operation of the code—because there was so much sulphur in his coal that the factories would not buy his product. That man is an efficient, economical unit. He has a place in our society, and he has furnished employment and was furnishing employment to some 600 manufacturers.

When the code went into effect, the large industries which controlled the code authority for that area, western Pennsylvania or the Virginia area, decided that the coal that came from that area should have been charged a floor price of so many dollars and cents a ton. There is a man of that type who was put out of the running.

Senator COSTIGAN. You had that particular case?

Mr. MASON. Yes. The man who has a big business, who has high salaries, who has all of his relatives on the pay roll at $50,000 or $60,000 a year, who is paying 6-percent interest on bonded indebtedness of plants which have fallen into ruts and to the ground, is still staying in business under the code because he is figuring all of those

6-percent charges and all of those salaries in as floor cost, and it is unfortunate, because by placing this little man at a floor price, you are stopping the little man from competing with him.

Senator COSTIGAN. Are you sufficiently informed to know that he would not have been driven out of business but for the N. R. A.?

Mr. MASON. I did not get that question, Senator.

Senator COSTIGAN. Are you sufficiently informed to know that this particular person would not have been driven out of business except for N. R. A.?

Mr. MASON. In the coal case, yes, Senator, because the day the code went into effect, he went out of business, and that is so dramatic that I am almost positive——

The CHAIRMAN. Did he appear before your committee?

Mr. MASON. Yes.

The CHAIRMAN. What is the name of that man?

Mr. MASON. I will supply it for the record.

Senator BARKLEY. You spoke a while ago about the iron and steel industry. I have here a chart prepared by the Research and Planning Division, which I believe yesterday you complimented.

Mr. MASON. Yes.

Senator BARKLEY. As being fair.

Mr. MASON. Very fair, and capable men on it.

Senator BARKLEY. I have here a chart prepared by that Research Division showing what happened to 30 steel and iron concerns; 5 large, 12 medium size, and 13 small companies, and that shows that in 1926 the 5 bigger companies had $167,000,000 in income before dividends; in 1927, $130,000,000; in 1928, $174,000,000; in 1929, $302,000,000; in 1930, $140,000,000; in 1931, $5,205,000; in 1932, a deficit of $123,000,000; in 1933, a deficit of $62,000,000; in 1934, a deficit of $29,000,000.

The 12 medium-sized companies, in 1926, had net earnings of $40,000,000; in 1927, $33,000,000; in 1928, $44,000,000; 1929, $63,-000,000; 1930, $31,000,000; in 1931, a deficit of $5,000,000; in 1932, a deficit of $20,000,000; in 1933, a deficit of $2,000,000; and in 1934 ner earnings of $2,263,000; which shows that while in 1934 the large steel companies still had a deficit of over $29,000,000, both the medium-sized companies and the small companies in 1934 had a net earning as indicated in this chart, and that in 1933 their deficit was considerably below that of 1932, which is true also of the big companies. Do you know of your own knowledge whether these figures are fairly accurate?

Mr. MASON. I think those figures are accurate, Senator, but I do not think they reflect the true condition. Are those research and planning on the members of the steel code authority?

Senator BARKLEY. I do not know.

Mr. MASON. If that is so, those figures are true, but I do not think they reflect the proper relation between the small people—the small man in the steel industry is not a producer, but is a fabricator. And in defining the fabricator's position, we have got to take into consideration that a great deal of those profits have been at his expense.

Senator BARKLEY. I would like to put this chart in the record. I do not want to interrupt Mr. Mason's testimony, but I would like it to go in.

Senator BLACK. Is there any way it can be seen who they are?

Mr. MASON. Does it show whether it is the fabricators or steel producers?

Senator BARKLEY. I do not know whether the chart shows it. It speaks for itself, and I see that it does. United States Steel Corporation, Bethlehem Steel Corporation, Youngstown Sheet & Tube Co., Jones & Laughlin Corporation, and Republic Steel Corporation, are the five big ones. The medium sized companies are the Inland Steel Co., National Steel, Otis Steel, Wheeling Steel, Crucible Steel, McKeesport Tin Plate Co., Spang Chalfant & Co., Pittsburgh Steel, Allegheny Steel, Granite City Steel, Sharon Steel Hoop Co., Colorado Fuel & Iron Co.

The small ones are the Gulf States Steel Co., A. M. Byers Co., Ludlum Steel Co., Superior Steel Corporation, LaClede Steel Co., Atlantic Steel Co.. Carpenter Steel Co., Scullin Steel Co., Apollo Steel Co., The Stanley Works, Acme Steel Co., Keystone Steel & Wire Co., and the Michigan Steel Tube Products Co.

Mr. MASON. Some of those are fabricators. Acme is a fabricator, and some of the others you read are, but I do not think those are all producers of steel.

(The chart referred to is as follows:)

Effect of the iron and steel code on small enterprises—iron and steel industry net earnings before dividends

[Figures preceded by (D) indicate deficit]

30 companies, large, medium, and small	1934 [1]	1933	1932	1931	1930	1929	1928	1927	1926
5 large companies [2]	(D) $29,583,000	(D) $62,996,000	(D) $123,024,000	(D) $5,205,000	$140,872,000	$302,775,000	$174,419,000	$130,110,000	$167,211,000
12 medium-sized companies [3]	13,138,000	(D) 2,397,000	(D) 20,583,000	(D) 5,639,000	31,400,000	63,361,000	44,891,000	33,556,000	40,743,000
13 small companies [3]	2,263,000	(D) 184,000	(D) 5,398,000	(D) 2,938,000	1,601,000	12,873,000	11,367,000	6,993,000	7,988,000

[1] Ingot production for the entire industry was practically the same in 1934 and in 1931, i. e., 25,275,000 and 25,429,000 gross tons, respectively. Note change out of deficit class of only the small and medium-sized company groups from 1931 to 1934. Note that the small-company group alone earned more in 1934 than in 1930.

[2] Includes Republic Steel Corporation: Earnings for the fourth quarter of 1934 and for the year 1926 not available.

[3] Includes Scullin Steel Co.: Earnings for 1926 not available.

Largest companies: Those with annual ingot capacity in excess of 3,000,000 gross tons.

Medium-sized companies: If integrated, having 300,000 to 3,000,000 gross tons annual ingot capacity regardless of voting power; if nonintegrated, having 10 votes or more under the code.

Small companies: If integrated, having less than 300,000 gross tons annual ingot capacity regardless of voting power; if nonintegrated, having fewer than 10 votes under the code. None represents as much as 1 percent of the total ingot capacity of the industry and most considerably less. These companies are the smallest for which figures are available.

Table indicating relative proportion of the industry's sales represented by the small-company group, medium-, and the large-company group, and based on voting strength which is calculated as follows: One vote for each half million dollars of invoice value of steel-code products shipped in 1933, but each member has at least one vote even though its annual invoice value it less than half a million dollars.

	Number of votes	Percent of total
5 largest companies	961	48.3
12 medium companies	425	21.4
13 small companies	79	4.0
Total 30 companies	1,465	73.7
Total all members of code	1,987	100.0

This data compiled by office of R. W. Shannon, deputy administrator, from figures collected by Division of Research and Planning, and from press reports of earnings statements of individual companies, whose statements are now available for the entire year of 1934, and one of the largest companies which has reported for only 9 months of 1934 which was a loss.

Net earnings before dividends of iron and steel industry, Mar. 27, 1935

[Companies with annual ingot capacity in excess of 3,000,000 gross tons. Thousands of dollars]

Largest companies	Number of votes, 1934	1934	1933	1932	1931	1930	1929	1928	1927	1926
United States Steel Corporation	511	[1] 21,668	[1] 36,501	[1] 71,176	[1] 13,038	104,422	197,592	114,174	87,807	116,667
Bethlehem Steel Corporation	160	551	8,736	[1] 19,404	116	23,843	42,243	18,586	15,826	20,246
Youngstown Sheet & Tube Co	74	[1] 2,589	[1] 8,343	[1] 13,273	[1] 7,041	7,036	21,564	10,446	7,023	15,149
Jones & Laughlin Corporation	79	[1] 3,671	5,367	[1] 7,910	[1] 2,284	9,093	20,849	15,569	11,239	15,149
Republic Steel Corporation [2]	137	[1] 2,206	[1] 4,049	[1] 11,261	[1] 9,034	3,522	20,527	15,644	8,125	----------
Total	961	[1] 29,583	[1] 62,996	[1] 123,024	[1] 5,205	140,872	302,775	174,419	130,110	167,211

[1] Deficit.
[2] Earnings for the fourth quarter, 1934, and for the year 1926 not available.

Net earnings before dividends of iron and steel industry

[If integrated, having 300,000 to 3,000,000 gross tons annual ingot capacity regardless of voting power; and if nonintegrated, having 10 votes or more under the code. Thousands of dollars]

Medium-sized companies	Number of votes 1934	1934	1933	1932	1931	1930	1929	1928	1927	1926
Inland Steel Co	51	3,730	167	[1] 3,321	1,264	6,499	11,712	9,334	6,807	7,148
National Steel Co	113	6,051	2,812	1,663	4,443	8,416	11,777	8,701	3,664	4,895
Otis Steel Co	26	561	[1] 1,510	[1] 2,830	[1] 1,572	869	3,688	3,371	1,383	1,907
Wheeling Steel Corporation	73	529	[1] 284	[1] 3,275	[1] 3,339	2,651	8,006	6,444	4,029	5,006
Crucible Steel Co	38	75	[1] 355	[1] 3,614	[1] 2,017	4,045	8,162	5,634	5,617	6,548
McKeesport Tin Plate Co	27	1,859	1,888	1,503	1,952	2,504	2,402	1,588	1,589	1,385
Spang Chalfant & Co., Inc	17	821	[1] 911	[1] 901	[1] 278	2,869	4,394	3,226	3,127	5,178
Pittsburgh Steel Co	20	[1] 1,330	[1] 2,339	[1] 2,501	[1] 1,714	1,690	4,535	1,342	1,952	2,534
Allegheny Steel Co	21	836	292	[1] 1,052	50	1,610	3,311	2,193	1,711	1,645
Granite City Steel Co	12	259	507	14	332	701	1,683	1,075	543	453
Sharon Steel Hoop Co	16	[1] 11	[1] 275	[1] 2,016	[1] 1,397	[1] 753	1,341	972	556	1,296
Colorado Fuel & Iron Co	11	[1] 242	[1] 2,389	[1] 4,253	[1] 3,363	299	2,350	1,011	2,578	2,748
Total	425	13,138	[1] 2,397	[1] 20,583	[1] 5,639	31,400	63,361	44,891	33,556	40,743

[1] Deficit.

Net earnings before dividends of iron and steel industry

[If integrated, having less than 300,000 gross tons annual ingot capacity, regardless of voting power; if nonintegrated, having fewer than 10 votes under the code. Thousands of dollars]

Small companies	Number of votes, 1934	1934	1933	1932	1931	1930	1929	1928	1927	1926
Gulf States Steel Co	13	[1] 28	265	[1] 518	[1] 977	[1] 815	1,310	925	756	800
A. M. Byers Co	4	[1] 737	[1] 1,016	[1] 1,076	[1] 103	653	1,897	1,739	1,111	1,425
Ludlum Steel Co	6	442	161	[1] 474	[1] 99	[1] 434	920	587	225	286
Superior Steel Co	6	[1] 265	[1] 255	[1] 600	[1] 492	[1] 359	75	29	[1] 190	272
LaClede Steel Co	5	104	[1] 40	[1] 110	148	452	919	907	372	753
Atlantic Steel Co	4	117	54	[1] 156	[1] 106	[1] 67	193	170	162	199
Carpenter Steel Co	4	182	[1] 584	[1] 394	[1] 592	412	723	241	289	548
Scullen Steel Co.[2]	1	[1] 305	[1] 609	[1] 576	[1] 499	164	338	138	48	----------
Apollo Steel Co	5	[1] 79	[1] 50	[1] 131	[1] 96	[1] 54	137	214	148	164
The Stanley Works	6	561	705	[1] 933	[1] 577	81	2,206	2,461	1,467	1,703
Acme Steel Co	9	1,031	942	21	372	941	2,553	2,183	1,415	1,179
Keystone Steel & Wire Co	15	1,153	196	[1] 215	197	586	1,257	1,289	1,016	501
Michigan Steel Tube Products	1	87	11	[1] 236	[1] 114	41	345	384	174	158
Total	79	2,263	[1] 184	[1] 5,398	[1] 2,938	1,601	12,873	11,367	6,993	7,988

[1] Deficit.
[2] Company formed January 1927.

Senator BARKLEY. Do you know whether the Rockaway Rolling Mills is a producer or fabricator?

Mr. MASON. No, sir.

Senator BARKLEY. Do you know whether the Jessop Steel Co. is a producer or fabricator?

Mr. MASON. No, sir.

Senator BARKLEY. Do you know whether the Washington Tin Plate Co. is a fabricator or producer, of Washington, Pa.?

Mr. MASON. That is a fabricator.

Senator BARKLEY. Do you know whether the Adirondack Steel Foundries Corporation, of Watervliet, N. Y., is a fabricator or producer?

Mr. MASON. That is a producer.

Senator BARKLEY. A small producer?

Mr. MASON. Senator, I am not familiar with those companies.

Senator BARKLEY. Do you know anything about the Colonial Steel Co., of Pittsburgh?

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

Senator BARKLEY. Do you know whether it is a producer or a fabricator?

Mr. MASON. No, sir.

Senator BARKLEY. The Tulsa Steel Corporation, of Sand Springs, Okla.?

Mr. MASON. I assume most of those are producers rather than fabricators. They may be subsidiaries of other companies. They did not mention the Ambridge Co., which is a fabricator?

Senator BARKLEY. No.

Mr. MASON. The Darrow Board covered the question of boycott. The Board reported [reading:]

> There is one other form of oppression of small enterprises, inadvertent but often grievous, the Board feels that it cannot overlook. By an Executive order of March 14, 1933, every bidder for a contract for any species of work for any part of the Government of the United States, including its agents or instrumentalities must present with his bids a certificate of compliance with each code to which he is subject.
>
> However justifiable this provision may have seemed as a means to enforce the National Recovery Act, its application has most unfortunate consequences. Many small establishments honestly purpose to observe the code so far as it is possible, but find some of its provisions incompatible with continued business existence. We are to remember that fact, repeatedly forced upon our attention in these investigations, that the National Recovery Act was framed for noble aims, but the codes were most often made by large business units animated by no higher purpose than their own advantage and the suppression of small competitors. We have been confronted with the cases of small enterprises that adhere strictly to the code requirements concerning hours of labor, wages, conditions of employment, but cannot, without ceasing to exist, comply with the requirements that mean the surrender of their vital business secrets or the end of every chance to meet the stronger position and greater resources of more powerful rivals. Yet such establishments are by this form of governmental boycott excluded from every opportunity to do governmental work.
>
> We have found instances where this practice has resulted in heavy losses to the Government, as well as a shrinkage of production and therefore of employment among small enterprises. Sometimes a factory that is hampered in its operation or forced to close its doors is the chief support of a small community, and the loss of the factory wage list is of serious meaning to tradesmen and many others.
>
> It is true that the order establishing this procedure contains a clause that its operation might be subject to exemptions to be granted after application to the administrator, but in practice it appears that few or none of these applications

are granted and some have not even been answered. Thus the harshness of the proceeding is not ameliorated but rather reinforced with a suggestion of intentional neglect. Without criticising the motives that prompted these provisions, we think they should be radically amended to save men that strive to be law observing from becoming outcasts or perforce evaders of the national enactment.

I have felt that that perhaps was particularly pat, especially after the testimony in the fire-hose case, which was brought before the committee.

You will find, if the committee goes into it, that the Comptroller has filed a great many complaints against various branches of the Government who are asking for bids on material which is used. You will find in the purchase of paper for stamps that Mr. McCarl has found a great deal of collusive bidding there, and, of course, the Secretary of the Interior in the cement situation has complained about it. You will find in the purchase of steel—I do not know whether that has been brought before the committee—in plates for ships in the navy yard——

Senator BARKLEY (interrupting). Do you know to what extent collusive bidding was engaged in prior to 1933?

Mr. MASON. Senator, I am not familiar with exact figures. Of course, there was collusive bidding, but we had a right to proceed, whether it was used or not. It was not used. The antitrust laws, Senator, have not been enforced for a long time.

Senator BARKLEY. You mean generally speaking?

Mr. MASON. Yes. And indeed, I believe, Senator, they ought to be strengthened.

Senator BARKLEY. The Government has been doing vastly more work during the last 2 or 3 years than it has previous to that, and that would in a measure increase the number of bids and the number of collusive bids?

Mr. MASON. I do not think there has been any complaint from the Comptroller's Office on bidding until after the codes went into effect. If there was anything at all done along that line, it was done secretly and behind closed doors before it got to him.

Senator BARKLEY. There was no way by which to discover it, as there has been since the code.

Mr. MASON. Now, there is no pretense at hiding it at all, and the prices, of course, have been relatively much higher on the bids.

Senator BARKLEY. I am not passing on the merits of the increases. Of course, the increase in labor and other costs would produce an increase in the costs not only to the Government but to the consumers. You cannot eat your cake and have it, too. If you are going to increase labor costs, which we have all been in favor of trying to do, you are bound to anticipate that that is going to be reflected in the increases in the cost of the product. I do not know of any way by which you can increase the cost of producing anything without increasing the price of it to the consumer, unless you assume that it was out of all balance before you increased labor costs.

Mr. MASON. Senator, they have used the theory which you have given, and which is a splendid one, and which we are all in accord with, as a means of camouflaging what industry has in many cases done. It is a good deal like Dickens' character Pecksniff, who is always talking about charity and mercy. Some 500 code authorities which we have, you will find in all of these codes first a provision

against child labor, and many of them talked the loudest about this were industries which never did employ child labor.

They always made a great display of the words "fair competition", but when we get the fine print in the back of the codes, we find back in the schedules F and G, and all down the alphabet, the provisions, while they are shouting about child labor and shortening the hours, which they practically all agreed to under the President's Reemployment Agreement, we find that they are helping themselves to the consumers' purse in a very aggressive manner and they are oppressing the small industry, which is the only protection which the consumer has against that oppression.

Senator BARKLEY. Of course, these codes are all to expire automatically, and the law expires automatically, on the 16th of June, unless we enact some legislation. According to my theory, if they are not going to last, and the law so expires, it is purely academic what has happended under them heretofore, because if they are going to be allowed to lapse and the law is to expire, there is not much gained by finding out what happened under them in the past. My theory is that we are trying to find out what happened in order to avoid the bad things in any law we enact in the future, and be guided by our experience in trying to preserve what has been found good or useful and to discard what has been found bad or inapplicable or unworkable or impracticable.

I do not think you have indicated yet your attitude toward the continuation of the N. R. A.——

Mr. MASON (interrupting). You mean just my own personal opinion? Not the reflection of the Darrow Board?

Senator BARKLEY. Your own personal opinion. I do not care about the Darrow Board. I assume your attitude is not that of Mr. Darrow, who was unwilling to give credit for anything.

Mr. MASON. I won't criticize the man I worked for.

Senator BARKLEY. I do not ask you to. I am doing that. He practically admitted that he would not give it credit for anything good.

Mr. MASON. I think he was punning.

Senator BARKLEY. It reminds me of a skit between Amos and Andy on the radio. Amos started to sing and Andy said, "I would not like that even if it was good." That seems to be his attitude. I would like to get your personal viewpoint as to the desirability of continuing the N. R. A. in some form or abandoning it altogether.

Mr. MASON. Well, Senator, we have had 2 years of operation under the N. R. A. codes. During those 2 years we have allowed any number of industries to meet and discuss their problems, and while they have discussed their problems, they have in many cases done just what Adam Smith said they would do, they have gotten together to agree to charge the public more for their products. They worked on the theory, Senator, like the man in the burning theater, "If everybody else will sit still and let me get out, everything will be fine." And each one of these 500 industries has been doing that.

Now that they have established that channel of operating their industry—and when I say "industry", I mean the whole industry and not any particular corporation—I think it would be suicide for the Government to simply wipe out all control and say that we will go back to the days that we had before the N. R. A., because if you did that you would not have the situation we had before N. R. A.

You would have these 500 industries still meeting, still setting their prices, and without any set-up at all to control them.

I think N. R. A. has made a miserable failure of controlling these activities. Perhaps it is not their fault. I think if we had had men who had experience along these lines, and by this, Senator, I am not trying to open up any question of criticism or comparison between the Federal Trade Commission and N. R. A. As a matter of fact, I don't believe that, except in theory, these two boards have any animosity toward each other. They are working divergent theories. One works on the theory of competition in order to protect the consumer and to prevent restraint in trade, and the Attorney General's office works on that theory, and on the other hand we have N. R. A., which believes in regimentation of business and the centralization and controlling of our economy from one point. So that, while I do not believe that there is any personal animosity between the two departments, as a matter of fact, the Federal Trade Commission did over a quarter of a million dollars of work for N. R. A. in its investigations, and has done a lot of that work.

But my opinion is, Senator, myself, speaking for myself, that we must have some kind of control as long as you have got the bull by the tail, and you have got to hang onto it until we get out of this situation. I frankly believe that. That is probably not the opinion of Mr. Darrow——

Senator BARKLEY (interrupting). I am sure that you realize that you are not expected to reflect anybody's views but your own, and that is what I was asking you, because you are an intelligent man, and I think you are a fair observer, and I assume that you did not come down here with the preconceived idea that it was wrong for the Government to attempt in any way to set up a regulatory body or have anything to do with the regulation of business. There is a school of thought in the country that thinks the Government should not do anything except hold office and let nature take its course. I am not one of those and I assume that you are not.

Mr. MASON. No, I am not, and I do not believe in the new laissez faire. The old laissez faire of "let us alone" has been amplified by the present administration to the new laissez faire of "let us alone and do not prosecute us for anything that we do." I think instead of abandoning all of this, we must place it in control and back out of this thing while we still have the opportunity to control these avenues, until we get away from this idea that we must stifle all competition and limit production and allocate business. I do not believe, Senator, in the fascistic method which the present N. R. A. set-up gives us.

Senator BARKLEY. I am not committed to any method or to any theory. I am anxious to try to find out the chaff, but I want to know that it is chaff, and not in the effort to throw out some chaff, throw out all the wheat. I would like to preserve the wheat.

Mr. MASON. You want to preserve the labor provisions, shorten the hours and increase the wages, and I think you can do it all, but I think it would be suicide to——

Senator BARKLEY (interrupting). Personally—and I am speaking only for myself and not for anyone else—I would not only like to preserve the labor conditions, and the short hours which affect labor and social conditions, but I would like personally to preserve some quick way, some effective and rapid way by which an obviously

unfair practice is indulged in by any business or group of business can be dealt with without waiting until it has no effect to deal with it except as a theory and as a moot question.

Mr. MASON. You have in mind evidently the *Sugar Trust case* which was filed in 1931 and was just finished several months ago only in the lower court.

Senator BARKLEY. That is one illustration of what I had in mind.

Mr. MASON. But, Senator, I am afraid——

Senator BARKLEY (interrupting). We set up the Federal Trade Commission, and I referred yesterday perhaps in too sharp terms to a possible jealousy. I had not reference to personal jealousies. But theoretically, there are two Government groups set up by the same Government and traveling in opposite directions. Naturally, each is tenacious of its theory about these things and probably would rather not have any encroachment on the part of the other, however honest its encroachment might be in carrying out its theory. We set up the Federal Trade Commission to get away from the delays of the Federal courts and to have an effective way by which evils that are discovered could be discontinued at once, subject of course to the right of appeal if there is a basis for appeal. Now it seems to me we have been in a situation for 3 or 4 years where we may need even a more rapid and effective instrument than that to deal with mass cases, with a mass situation; not an individual case of complaint brought by one man against another, which is settled by an order to cease and desist, or may be another order or a prosecution which binds the two parties. But we have been in a mass situation where some sort of mass action, it seems to me, was necessary to deal with an emergency, and it is in that sense that I still favor a machinery that will be effective and may be brought to a remedy of long delays of any other Government agency, whether it is a court or anything else.

Mr. MASON. Of course, Senator, as long as we keep the antitrust laws intact and strengthen them, anything that we do along the line that you suggest will be splendid, but if we take away the protection of the consumer and also the manufacturer, of the antitrust laws, we are going to have to go absolutely to the other theory of Government control, which is either Fascism or Communism.

Senator KING. It is either a democracy or regimentation in our form of government.

Mr. MASON. Absolutely, Senator.

Senator BARKLEY. Of course pure democracy is the laissez-faire theory that the Government should do nothing about anything.

Mr. MASON. That is what the N. R. A. wants. They want you to prosecute nobody for the conspiracy to restrain trade. That is the new laissez faire.

Senator BARKLEY. I do not agree with you that that is their attitude. I am not defending the N. R. A. and I have had occasion, as I have indicated here frequently, to criticize and camp on their doorsteps to try to get things changed for people whom I am here to represent. But I do realize the difficulty of getting men, groups of men or business groups to go in voluntarily into any agreement or any arrangement that might be regarded as a theoretical violation of the antitrust laws which you say, and I agree, have not been enforced effectually for a long time, if ever, except in certain large, outstanding cases that get much publicity but did not result in much good in the

long run to the average men. I am wondering whether we can ever get business to cooperate, and we want it to cooperate, if there is to be suspended always over their heads the possibility that another department of the Government is going to jump on them and prosecute them for something that the Government has invited them to do and to enter into an agreement about.

Mr. MASON. You just had a recent trade conference in the wholesale drug conference which has abolished those things you wanted to abolish and the Government has never relinquished its right to protect itself against over charging and the wholesale trade conference which was recently completed, I believe in Chicago. I am not familiar with the details, but you can have those things that you want, Senator, without selling our heritage for these other advantages which we will have anyway.

Senator BARKLEY. To quote Senator Couzens, I am not on the witness stand.

Senator COUZENS. I thought you were the way you have been talking. [Laughter.]

Senator BARKLEY. I think it would not be a bad idea now and then for the witnesses to get the viewpoint and the reactions and some of the difficulties of some members of this committee so that they can address themselves to those, because after the witness has testified here, we will be wrangling about what you said and what your attitude was where nobody outside can hear us.

Mr. MASON. I would like to turn over to your staff some suggestions which I prepared at the time the Darrow Board was in existence for an amendment to the President's Executive order which will cover some of those things which you have discussed.

The CHAIRMAN. We will be very glad to get it.

Mr. MASON. I would like also to turn over to the committee a list of names if you care—otherwise, I won't bother—of those who have not appeared before the committee, but who would probably be able to give information.

The CHAIRMAN. We will be very glad to give it to the staff, because they are going over this matter.

Senator BARKLEY. Do you mean that you want to submit a list of witnesses who want to be heard?

Mr. MASON. They are men who did not appear before the Darrow Board and would not appear before any board unless subpenaed.

Senator BARKLEY. Are they critics of N. R. A.?

Mr. MASON. No; they are men very much in favor of N. R. A.

Senator BARKLEY. Before we get through I would like to hear some business groups or representatives who have not been in N. R. A., and who have not had anything against it or anything particularly for it, to give their reaction.

Mr. MASON. These men that I am suggesting are either Government officials who are familiar with the abuses of N. R. A., or are code authorities who have engaged in abuses.

The CHAIRMAN. We will be very glad to get any list of names, and the experts will then give it consideration. Is that all?

Mr. MASON. Yes.

Senator KING. Did you put in all you want of the Darrow report?

Mr. MASON. Yes. May I submit some other things possibly from the Darrow Board?

The CHAIRMAN. Yes; that may go in with your testimony.

(The following suggestions for amendment of the pending bill (S. 2445) were subsequently submitted by Mr. Mason:)

CHICAGO, ILL., *April 15, 1935.*

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR: In accordance with the direction of the Senate Finance Committee, I enclose herewith copies of suggestions for amendment of the pending bill (S. 2445, 74th Cong., 1st sess.). In part these suggestions authorize the creation of a board of referees in commerce.

The need for this board is such a nature as to warrant an express provision in the bill requiring and not merely permitting the creation of such a body. The following pages will indicate in more detail the services to be rendered by this board in preventing monopoly and protecting the industrial and trade rights of the small as well as the large business man.

The board will serve as a counter check to the general formation and operation of codes by the National Industrial Relations Board and the code authorities with reference to monopolistic tendencies.

These particular suggestions are designated as subsections 1 to 14 and would properly be incorporated in section 12 under the title of "Enforcement." If these suggestions are followed, it will be necessary to amend section 3, paragraph G, page 12, by striking out in lines 1 and 2 the words "in a manner consistent with the provision of this title" and amending section 5, page 13, by striking out in line 22, the words "but the provisions incorporated in any code" and all of lines 23, 24, 25 and on page 14 of the same section all of lines 1 and 2 and the words "to the limitations and provisions of the title."

It is my belief that the pending bill as it now stands increases and fortifies monopolistic tendencies rather than restrains them and while the bill accomplishes this result it at the same time does nothing to strengthen the legal rights of labor.

Where the National Industrial Recovery Act has come before the courts, section 7a has been generally stricken down on the ground that labor and labor relations in the matter of production are not part of interstate commerce. It is obvious that if section 7a in the extended National Industrial Recovery Act is to receive any recognition from the courts as a valid exercise of congressional authority it must be largely dependent upon the declaration that Congress makes as to its relation to interstate commerce. It is inconceivable therefore that this bill should be drafted without some legislative declaration that in the judgment of Congress it is necessary to regulate these labor relations in order to prevent unfair competition in industries engaged in interstate commerce and to avoid industrial disputes which tend to burden and obstruct interstate commerce. While such a declaration by Congress may not be in the last analysis binding on the courts, it will in my judgment be accepted by the courts and in any event should be stated in the legislative declaration of this act as the justification for the provisions that are later found in section 7a.

Therefore I suggest that on page 2 in line 3 after the end of the sentence with the word "welfare" the following be added: "It is further declared and found that the right of employees to organize and collectively bargain for wages, hours of labor and conditions of employment should be guaranteed in order to prevent wage cutting with disparate labor costs resulting in unfair competition in industries engaged in interstate commerce and to avoid industrial disputes which obstruct and burden interstate commerce."

I also suggest that on page 2 in line 22 after the word "management" the period be stricken out and the following be added: "and to that end provides that employees shall have the right to organize and collectively bargain with their employers for wages, hours of labor and conditions of employment."

Respectfully submitted.

LOWELL B. MASON.

SUGGESTIONS FOR AMENDMENTS TO SENATE BILL 2445

SUBSECTION 1	SUBSECTION 1
There is hereby created a board to be known as the "Board of Referees in Commerce."	The Board is essentially a court. The Referee sits as an impartial judge and renders decisions affecting legal rights. Its position in industry is analogous to that of a United States Commissioner in criminal cases. The Commissioner's finding in an immigration case is absolute, so the Referee's ruling on removal of "blue eagles", and questions of bidders' qualifications on Government contracts are also absolute. The Commissioner's rulings in "hold over" hearings are preliminary and are neither absolute nor final. The Referee's findings in cases under section 6, paragraph C pertaining to applications for institution of criminal or civil suits for compliance are in the same category.
SECTION II	SECTION II
Its membership appointed by the President shall consist of a chairman, vice chairman, and thirty-seven members hereinafter designated as "Referees in Commerce" whose terms of office may be terminated by the President at will.	To obviate jurisdictional conflicts and decisions of one referee, contrary and repugnant to the findings of referees in different districts, they should serve under the coordination and direction of one authority so far as questions of law are concerned. This would cure the present anomy, where the Attorney General, the courts, and the Federal Trade Commission enjoin one industry from doing that, which the National Recovery Administration will prosecute other industries for failing to do.
SUBSECTION III	SUBSECTION III
The Chairman shall assign three Referees to geographic districts identical in numerical designation, area, and boundaries with the United States Circuit Court of Appeals districts, in existence at the time of the signing of this act: *Provided, however,* That the first, second, third, fifth, sixth, seventh, and ninth shall have four Referees, such excess Referees being subject to reassignment by the Chairman to any district he may designate.	Follows the general plan of assignments to districts as set forth in (S. 2627, 1932) three referees to each present appellate court district except in the highly industrialized sections where four are designated.
SECTION IV	SECTION IV
The Chairman shall designate in each district one Referee who shall serve as Senior Referee when the Referees sit as a committee, he shall assign hearings, have charge of the official district records and make such reports of the condition of the calendar and the causes thereon in his district as may be required by the Chairman.	Decentralizes still further the organization and management of the work of the referees. Allows for grouping of cases in "sections of influence."

SECTION IV	SECTION IV
Jurisdiction: The jurisdiction of each Referee shall be as follows: A. Appeals from orders regulating the distribution, use, and display of insignia or labels authorized under section 10, paragraph B, provided however said appeals are not based on controversies arising from rulings based on section 7A and B.	A. The governmental power to close a business should be far removed from the control of competitors of that business.
(B) All claims for money damage assessments under codes created by mutual contract between code members.	B. The money damage clause in codes has been lifted bodily out of the German, French, Belgian international coal and iron cartels. The value of their adaptation here under dissimilar economic conditions is doubtful, but if maintained they should at least be given a color of impartiality. This paragraph would remove the charge of favoritism.
(C) Applications by code members, or code authorities for institution of criminal or civil suits for compliance.	C. Local public hearings on charges of violating codes will decrease appeals to courts and give more to decisions than at present where controversies are waged by correspondence.
(D) Appeals by code members from governmental or code authority interpretations of codes as applied to specific cases or from refusals to give interpretations. The Referee shall be arbiter as to what constitutes refusal.	D. Obscurity in code language makes it essential that some impartial body be the interpreter.
(E) All applications for exemption from operation under the codes for any of the following reasons: (1) That the code imposes inequitably restrictions to membership. (2) That the code members are not truly representative of the trade or industry which they seek to manage. (3) That the code is designed or that the management of the code authority promotes monopolies and eliminates and oppresses small enterprises and operates to discriminate against them.	E. Gives jurisdiction to settle points that now have no juridical situs except the President (even courts cannot rule on paragraph E, subsections 1 and 2 of present law).
(F) Appeals from rulings of code authorities.	F. Germany, in its ordinance against misuse of economic powers, enacted November 1923, took away from code authorities (cartel managers) the right to pass judgment on their own regulations. Even Hitler, ruthless as he is, carefully maintained this right of court review by incorporating in article 7 of his July 15, 1933, decree the provision that the Minister of Economics must proceed through the cartel courts to obtain punishment for violations of industrial regulations. This separation of functions has been further demonstrated in the German ordinance of January 20, 1934, establishing the "Ehrengericht", or Social Honor Court. In Roumania the act of February 14, 1933, also accomplishes the same end without forcing purely industrial questions into the crowded regular courts.

(G) Applicants except code authorities must apply to Referees within the district in which they are located.

(H) Appeals from rulings qualifying or disqualifying bids on Government contracts or contracts involving the use of Government funds.

(I) The Board of Referees shall have no jurisdiction in controversies arising under section 7 (A or B) of this Act.

SUBSECTION VII

Appeals from the findings of Referees.

(A) The Federal Trade Commission is hereby designated supreme arbiter of the law merchant as herein set forth. Appeals from final orders entered upon the official district records of the Referee shall be allowed if taken within five days to the Federal Trade Commission.

(B) Appeals shall not operate as a stay, unless so ordered by a Federal Trade Commissioner: *Provided, however,* Nothing in this order shall prohibit the Federal Trade Commission, upon its own motion from altering, amending, or quashing any referees' findings.

(C) The orders of the Federal Trade Commission shall be subject to court review as provided for in the Federal Trade Commission Act of September 26, 1914 (38 Stat. 717), as amended, provided any party obtaining a review of such order in the Circuit Court of Appeals shall file in the said court a written petition praying that the order of the Commission be set aside within sixty days of its final entry.

SUBSECTION VIII

No original finding shall be entered upon the district records until receipt of a certified copy of the same has been acknowledged by the Chairman.

SUBSECTION IX

The Attorney General or counsel designated by him may intervene and appear in such proceeding before any Referee or the Federal Trade Commission.

G. Code authorities must be allowed to file complaints in whatever district alleged violations occur.

H. Appeals from rulings under the Executive Order of March 14, 1934, float around from one department to another. This gives one juridical situs to this controversy instead of a multitude of them.

I. Labor controversies exempted.

SUBSECTION VII

A. Over and above the Referee's findings should stand the Federal Trade Commission as a supreme court of the law merchant of the United States. It is that by statute now, insofar as unfair methods of competition are concerned. Its years of experience, its trained personnel, its established precedents would give body and certainty to the rulings of the newly formed Board of Referees. This is in accordance with the Executive Order of January 20, 1934, relating to National Recovery Act code cases before the Federal Trade Commission.

C. To cure the defects in the present Federal Trade Commission Act. Section 5 of said act puts no limitation as to the time of filing appeals against the Commission.

SUBSECTION VIII

Herein lies the power to coordinate the law merchant. If a referee were to rule contrary to the Federal Trade Commission, the Chairman would refuse official sanction.

The following sections were originally drafted as suggestions for an Executive order and are attached hereto to demonstrate the ease with which the judicial functions may be separated from the legislative and executive without disturbing the personnel of National Recovery Administration.

SUBSECTION IX. A

The National Industrial Recovery Board is hereby designated as the official custodian of all findings, formally entered upon the district records. The original to be kept in the district offices and copies filed in the Chief Clerk's office of the National Industrial Recovery Board.

SUBSECTIONS IX. A AND X

Decisions of administrative tribunals should be easily and readily available at some central office.

SUBSECTION X

The National Industrial Recovery Board shall assign official reporters who shall make transcripts of the testimony at hearings. The same to be available to the public on such terms as the National Industrial Recovery Board shall decree.

SUBSECTION XI

The National Industrial Recovery Board shall assign for duty to the Board of Referees in Commerce the following persons:

One compliance attorney, one clerk, and one bailiff to each referee and in addition thereto, one chief district record clerk and one chief district bailiff to each senior Referee, and such other clerical help as is necessary to carry out the purpose of this Executive order.

SUBSECTION XI

Part of the divisional and State director's personnel transferred.

SUBSECTION XII

The National Industrial Recovery Board shall furnish proper hearing rooms, supplies, and equipment for the Referees. Said properties shall be under the custody of the Chief District Bailiff, in whose district the property is located and he shall make account of the same to the Administrative Assistant Chief Clerk of the National Industrial Recovery Board.

SUBSECTION XII

Now that the code making stage has passed, much of the personnel of the National Industrial Recovery Board can be used to handle the machinery of the Board of Referees.

SUBSECTION XIII

Nothing in this order shall affect the method of making applications for new codes, supplements, of amendments to existing codes. Jurisdiction of which matters is specifically reserved to the National Industrial Recovery Board.

SUBSECTION XIV

The members of the Board of Referees in Commerce shall receive as compensation for their services for the time they are engaged, respectively, in the performance of their duties, the following sums: The chairman shall serve without compensation, the vice chairman shall receive the sum of $——, the senior referees shall receive the sum of $——, and referees shall receive the sum of $—— per annum; together with such expenses as may be allowed by law to officers and employees of the regular establishments of the Government; and the chairman of said Board may, without regard to the provisions of the civil-service laws of the Classification Act of 1923, as amended, or the provisions of Executive Order No. 6440, as amended, appoint and fix the compensation and describe the duties of such clerical, technical, and legal personnel as may be necessary to carry out the purposes of this order.

STATEMENT OF FREDERICK S. KELLOGG, MONTCLAIR, N. J.

(The witness was first duly sworn by the chairman, and testified as follows:)

Mr. KELLOGG. My name is Frederick S. Kellogg, Montclair, N. J., practicing law in Jersey City, N. J., and also admitted to the bar in New York.

Senator COUZENS. Are you representing any particular industry?

Mr. KELLOGG. The Ames Co., whom I speak for, is in the iron and steel industry. The Ames Co. have asked me to come here and object particularly to the iron and steel code, and furthermore to the code of the reinforcing materials fabricating industry.

That is the industry which governs, among other things, the reinforcing steel that goes into roads and bridges and all other kinds of cement work.

The objections which I wish to urge are, first, the commercial restrictions placed by these codes on the buying and selling, the price-fixing, in the iron and steel code, the price-fixing operated peculiarly through a basing-point system, and I want to speak of that.

The second point that I want to object to is the monopolistic control of the industry by the large and dominant interests which is permitted under the law, and which through certain actions of the Government are aided and abetted by the Government itself. I do not say that the Government intended to produce that result, but I say that what has been done has resulted in that way.

Another matter that we wish to object to is the attempt of the Federal Government to regulate matters of production, that is, manufacture as distinguished from commerce, and included under this head is the relation of employer and employee in the productive processes. And under that head I will hope to point out that I do not think that there is ability—I am not speaking of the Government

alone, but anywhere else—to regulate the productive local processes of this entire country from one central place. I do not think it can be done. I do not think the machinery can be set up which will effectively and properly accomplish the result.

In order to show the basis of these objections, I will have to state the position of the Ames Co. in the industry. The business was started in 1859 at Jersey City, and it has been in continuous control of the Ames family ever since. It started before they made steel in quantities in this country. It started in the wrought-iron era, if you want to call it that.

The making of iron and steel in the modern sense came in with the Bessemer converter in about 1864, and in 1868 there came in the open-hearth furnace, and quantity production of steel was not prevalent until those methods of melting steel had come into use. Therefore, when the Ames Co. started business, they were wrought-iron people. At that time the railroads were being pushed across the country, and the Ames Co. started originally as a manufacturer of wrought iron railroad spikes.

They have ever since been in the business of making railroad spikes, but due to the changes in the nature of the industry as a whole, the great bulk of their product is now steel spikes and not wrought iron spikes.

The course of production of iron and steel—and I have got to state this in order to show the position of the Ames Co. in the industry—is that the ore is mined, and limestone and coke put with it, it is put into a blast furnace, and you come out with a substance that you call pig iron. It is high in carbon and is allowed to cool in the form of pigs and it is called "cold" pig iron. If it is not allowed to cool and it is carried into the next operation, it is called "hot" pig iron.

The hot pig iron, as far as the steel industry is concerned, or the cold pig iron, is placed perhaps in a Bessemer converter and the carbon is burned out of it in that Bessemer converter, and you come out with the steel. Depending upon the lining that you have in the Bessemer converter, you get rid of certain other things.

Senator BLACK. Of what?

Mr. KELLOGG. You may get phosphorus out, or sulphur out depending on the lining of your converter. It is a refining process. But the main distinction between your iron and your steel is the amount of carbon that is in it.

The next thing that happens after that is that this molten mass, this liquid mass, is poured into a mold, what is known as an "ingot mold." There is another process through which the iron might go into hot iron, and that is to take the pig, put it in a furnace, called a puddling furnace and there worked to—under a lower degree of heat than in making steel—into a pasty mass. The iron never melts in that puddling furnace, it just becomes a soft, pasty, spongy mass. The slag, the impurities, in that process are worked out, and then the ball or whatever it is called, is taken out and squeezed, but in the hot-iron process you never get an ingot because you never get the stuff melted after you start making it, and you never get an ingot.

The reason I mention that is because there are some peculiar provisions in the code about hot-iron ingots, and in the industry there is not any such thing.

Senator KING. There is some provision in the code which militates against those who are engaged in transferring the raw material into various forms of finished product?

Mr. KELLOGG. Yes, sir.

Senator BARKLEY. If there is no such thing as a hot-iron ingot, then what effect does that provision of the code have?

Mr. KELLOGG. The only effect it has is that the code authority later in the process, said that they had added numerous basing points to the code, and among others they added a basing point at Jersey City where our plant is located for iron ingots which do not exist.

Senator BARKLEY. What effect would that have on you?

Mr. KELLOGG. It did not have any effect on us. The only effect it had was to give a false impression on what they were doing for us.

Senator KING. Then you cannot complain if it did not hurt you.

Mr. KELLOGG. I do not complain of that, except to this extent, that it has given a false impression that we have no ground of complaint because we have a basing point.

Senator BARKLEY. Did you want a basing point?

Mr. KELLOGG. No; we do not want a basing point, and we do not want the other fellows to sell on any artificial basing point, either. That is where we get to on that proposition.

The Ames position is this: They never have puddled iron, and they never have melted steel. They have always bought their material, heated it, and rolled it. They are processors. I do not like the word "fabricator" that has been used to denote the same thing, because I think that has a technical meaning in the construction of girders, and that sort of thing.

Senator BARKLEY. "Fabricator" to the public has frequently carried the impression of making something out of nothing, like fabricating silk by using rayon, and it is a sort of fabrication. It has the impression of not being genuine, and I do not think, as applied to the steel industry, the fabricator is in that category.

Mr. KELLOGG. As I understand the phrase in the steel industry "fabricator", not in the sense to which you refer, but the fabricators are those who make structural steel and that sort of thing.

Ames originally did take this material, wrought iron, for instance, mild steel in many instances, and they would put it through their rolling mill and having gotten a bar, they would make from that bar, spikes, or they would sell the bar. At later times, when the concrete roads came in, they would make reinforcing bars out of this material.

Others in this industry, and in time Ames started another process known as "slab pile" or "fagotting" process. Raw iron will weld under pressure and heat, and so will a mild steel, and it was the practice in the old days and it is a practice that has not been entirely abandoned yet, to gather up in slabs, or slab pile or fagotting, pieces of wrought iron or on the other hand, pieces of mild steel, and heat them and roll them when they coalesce into a bar or a rod which had a perfectly well-established market value for certain purposes.

Of course, you had to be skillful. If you were careless in the operation, your product was not good, but skillfully applied it would prove a perfectly merchantable product which is well known in the industry.

As I say, Ames comes into the industry at the place where they take this hot material, either a new steel billet, it may be new steel which is

of sufficient size in the piece to be rolled down and still not be a billet, it may be, for instance, a plate crop. They may buy scrap of other varieties of sufficient size, for instance, steel rails. Steel rails can be rolled down into reinforcing bars for certain purposes—not for every purpose. They may take scrap which is just ordinary scrap, slab pile it or fagot it and roll it into the process that comes from that.

The practice of the Ames Co. in regard to buying and selling has been this. At first they bought only the wrought iron, and then they bought these other materials.

Senator KING. I think, Mr. Kellogg, at this point we will take a recess until 2 o'clock, and we will meet in the District of Columbia Committee room in the Senate Office Building at that time.

(Whereupon, at 11:55 a. m., a recess was taken until 2 p. m. of the same day.)

AFTER RECESS.

(The hearing was resumed at 2 p. m., in the committee room of the Committee on the District of Columbia in the Capitol Building.)

STATEMENT OF FREDERICK S. KELLOGG—Resumed

The CHAIRMAN. All right, Mr. Kellogg, you may proceed.

Mr. KELLOGG. At the time of adjournment I was trying to sketch the position of the Ames Co., in the industry, and I had not quite finished that.

The Ames Co. purchased its raw material sometime from the owner or mill, and sometimes through brokers, remittal men, and if such deliveries where the material was made and sometimes at the place where it was located, and at other times it was delivered at an intermediate point, such, for instance as alongside the dock at Jersey City, the Ames plant being a mile inland about from the docks. Now, in those purchases the Ames Co.——

Senator KING (interposing). You just had one plant, did you, Mr. Kellogg?

Mr. KELLOGG. We only had one plant, and have never had but one plant, and that has always been located at Jersey City, N. J.

During those purchases, we never negotiated or fixed the price at or as of any artificial basing point for those materials.

And I had better stop now and define what I mean by an artificial basing point. If a person sells materials where they are made, or are to be made, and sells on that basis with the freight from the place to the point of delivery I do not consider that an artificial basing point; it is an actuality in the transaction.

If a person sells from a place where the goods may be at the time, assuming that they can be moved out to warehouse, or something of that sort, and sells on the basis of that place plus cost of delivery, that is not an artificial basing point.

But where somebody sells goods based on a point where the goods are not, and from which transportation charges do not have to be paid, then that is selling on an artificial basing point. Now of course the customer is interested in the cost laid down at his plant. It may be that the customer desires to buy where the goods are and pay his own transportation charges or transport his own material to his plant, or it may be that he wishes them delivered at his plant,

f. o. b. The customer, it seems to me, should have something to say about that situation.

Now, when we get to the question of these artificial basing points, there are two elements in the situation. There is not only the artificial-basing-point element, but there is a further provision in the steel code to the effect that the charge to be made to the customer shall be the charge as is at the artificial basing point, plus the freight from the artificial basing point to the place of delivery, which freight may be entirely phantom freight, or may be largely phantom freight.

I will make this illustration: Under the steel code at present, steel bars, carbon steel bars, are based either on Buffalo or on Pittsburgh.

If the Ames Co. makes a carbon steel bar, and if the Ames Co. were a member of the code, which it is not, or if they were to make a carbon steel bar in Jersey City out of material that had never seen Pittsburgh or Buffalo, it would be obliged to add to its price the freight from Buffalo to New York City, instead of the delivery charge from Jersey City across on the ferry, or through the Holland Tunnel to New York City. Now that makes about $5 a ton.

Senator KING. You must charge that to the consumer?

Mr. KELLOGG. We are bound to charge that to the consumer, because under the code, the steel code, it says the only thing you can quote your customer is a delivered price at his place of business, or his place where he nominates delivery. And you are not supposed to allow him to nominate a place of delivery other than the place of use or the place of consumption of it. So that the result of the situation is now that Ames & Co. sit in this situation: Before this code went into effect they were buying steel billets as a part of their raw material. They were buying them in eastern Pennsylvania and they were buying them from Bridgeport, Conn. The minute that the code went into effect those people who had been supplying the billets were in turn obliged to file a base price for those billets at Buffalo or Pittsburgh, and then to charge Ames Co. the filed base price at Buffalo or Pittsburgh, plus the all-rail rate from Buffalo and Pittsburgh to Jersey City.

Now, Ames inquired of the people in Bridgeport, "If you do not have any delivery charge at all what price do you sell at?" They said, "Where are you going to take delivery?" He said, "We will come up to Bridgeport and we will get our own billets from you." "Oh, well, the price will be the Buffalo rate plus the freight from Buffalo to Bridgeport." Now, the actual result of this basing point situation was that the price of billets to Ames just after the code went into effect, because the code went into effect first, and then this price-filing idea was to be carried out within 10 days, but as soon as the code went into effect and the prices were filed, the price of billets to Ames jumped $10 per ton. Now about $4 out of that $10 per ton was phantom freight, because it cost them about $5.45 a ton theoretical freight from Buffalo or Pittsburgh, and it cost them about $1 to $1.50 to take this material, as they had been doing before, from Bridgeport down to Jersey City by water.

Another matter that I want to stress is that all of this freight, this phantom freight, is figured on all-rail rates. Now I think that the charge from Bridgeport to Jersey City through that congested New York terminal business, and the lighterage charges and all of that sort of thing is about $4.16.

The CHAIRMAN. By water?

Mr. KELLOGG. About $4.16 a ton by rail.

The CHAIRMAN. By rail?

Mr. KELLOGG. The cost by water of that delivered at the Ames plant was, as I say, between $1 and $1.25. The net result of the steel code system on these phantom freights is this, that if anyone is to get any advantage out of the fact that they are located near water, it is the fellow that sells, because there is not anything in the situation that prevents a man from Bridgeport from still delivering, although he charges the freight from some other place, delivering by water.

Now, as a practical matter, the Ames Co. has been economically unable to buy one single billet since the code went into effect in the latter part of August 1933. Therefore, they have been shut off, entirely shut off, except for a little stock of billets that they had in their hands at the time, from making and delivering any product wherein the specifications required that that product be made from new steel billets. Now, that was the net result, as far as Ames is concerned. In that particular they have been shut off.

Some specifications may require that the product which Ames was to make and deliver be made of new steel. And it is possible and known and the customer knows it, that there are the terms of new steel, perhaps, and billets that can be made into certain products. For instance, in very heavy plates, or sheets which are fabricated, large pieces may be cut off. Those pieces are no longer useful as plates. They may be taken by washermakers or washers or nuts stamped out of them. They may be taken by a reroller, such as Ames is, they may be rolled into rods or bars of various sorts. I think it is recognized in the steel industry that if it is properly done, the more rolling that a steel is submitted to, the better the quality of the steel. The working of the steel has a beneficial effect if properly performed.

Therefore, the customers would have no objection in certain instances to taking these plate crops as a raw material, or allowing Ames to take these crops as a raw material and taking the product made from them. There is no deception on a thing like that. The customer is informed of what material Ames is going to make the product of, and it is up to him, the customer, to say whether that be a set product or not.

We have not been able to buy any plate crops since the steel code went into effect, and the reason for that situation is that they put into their regulations at first—now, mind you, these regulations were regulations imposed by a committee of the code authority, and approved by the code authority.

Senator KING. Do you know who the committee was?

Mr. KELLOGG. I beg your pardon?

Senator KING. Do you know who the committee was?

Mr. KELLOGG. I believe that the classification to which I am about to refer was imposed by a committee known as the "technical committee", and I believe that the findings or decisions of the technical committee were then taken to the board of directors of the Steel Institute, who are the code authority, and were approved.

What they did by these regulations was this: They said that no member of the industry should sell this material for rerolling purposes

at the same price they would sell it as scrap to go back into the smelting furnace. In other words, the very same material, if Ames wanted to buy it, had a higher price than it did if any of those people wanted to buy it for the purpose of remelting. And in that way they raised the price of another raw material.

Senator KING. Were you the only one that suffered from that thing?

Mr. KELLOGG. No. There were other people. A lot of the washer people suffered from the same thing, and I think, the nut makers, who were stamping from these plates by cold stamping, making nuts out of it.

Senator KING. Have you analyzed the results of the basic-point fallacy which was adopted, the results upon the industry, upon the fabricators, using that in the generic sense, upon Ames Co., and others similarly situated?

Mr. KELLOGG. Perhaps I can state it this way: The effect has been to give the advantage to the integrated units in the industry.

Senator KING. Yes. And tended to raise the price of steel to——

Mr. KELLOGG (interposing). It raised the price of steel $10 a ton on that raw material of Ames over night.

Senator KING (continuing). All subordinate plants, even in the steel and integrated industries, to say nothing of those who were independent or outside of the Steel Institute.

Mr. KELLOGG. Yes. Now here is the situation: For instance, let us go along in regard to railroad spikes. Certain of the railroads require that railroad spikes today be made of new billet steel. Now what is the situation? If the Bethlehem Steel Co., for instance, wants to make those spikes, it does not charge itself any basing point prices, or anything else, for the billets. It may be an entirely different plant. The billets may be made in one plant, they may be moved over into another plant and there made into railroad spikes, or rolled into rods and made into round bars, and they do not charge themselves, and the code was very careful to see they do not need to charge themselves as to their subordinate companies on any of these basing situations.

What happened to these things? They raised the billet price $10 a ton. But they did not raise 1 cent the railroad spikes on their basing-point system. And they make the city a basing point for spikes, which would give them the privilege to come in and sell billets and absorb the freight from plants in Pennsylvania in Jersey City, right alongside of us, providing we were filing a price, but we never filed a price.

The CHAIRMAN. Then the basing point as it applies to one part of the steel industry may be one place, and the basing point as to another may be a totally different place?

Mr. KELLOGG. That is perfectly true. There is a whole schedule for basing points for various things in the code, and they change it slightly from time to time.

The CHAIRMAN. You say your organization did not go into the code?

Mr. KELLOGG. Our organization did not join the code.

The CHAIRMAN. What was the reason?

Mr. KELLOGG. Because from what we were observing from what went on and what we observed as it went on, we concluded it would mean our economic death to do it. We observed our raw material

being put up and our finished product not being put up, and we were being squeezed right in between, and if we joined the code we had to sell at those prices and had to buy at those prices. And the thing was just a squeeze of the processor.

The CHAIRMAN. Then you never had the "blue eagle" at all?

Mr. KELLOGG. I beg your pardon?

The CHAIRMAN. You did not have the "blue eagle"?

Mr. KELLOGG. We never had the "blue eagle".

The CHAIRMAN. Have you ever been brought before the code authorities with reference to the matter?

Mr. KELLOGG. We have tried to get before the code authority by correspondence, which I have here. And the thing finally bogged down on November 13, 1933, and there is still an unanswered letter addressed to the code authority, which we sent to the N. R. A., and asked them what to do about it, and did not get an answer as far as the code authority goes, until the last 2 weeks, and that is the last we heard of them.

The CHAIRMAN. Were you ever indicted for noncompliance or anything?

Mr. KELLOGG. No. If they had cited us for noncompliance we could have tried this matter out and found out where we stood, but we did not get that far.

Senator KING. They sent you assessment blanks, did they not, assessment notices?

Mr. KELLOGG. I do not think that code did. The code for the reinforcing fabricators did. And the scrap dealers sent us something in a telegram telling us we would have our "blue eagle" taken away if we did not pay up the next morning, I think it was, and as we did not have a "blue eagle" it did not frighten us so much.

The CHAIRMAN. How many people do you work in the industry?

Mr. KELLOGG. About 300.

The CHAIRMAN. Have you operated right on through?

Mr. KELLOGG. We have operated at varying degrees right on through.

The CHAIRMAN. You have observed the hours of labor?

Mr. KELLOGG. We have observed the hours of labor.

The CHAIRMAN. And the wages?

Mr. KELLOGG. And the rates of pay laid down in the steel code.

The CHAIRMAN. Was there something else now, Mr. Kellogg?

Mr. KELLOGG. Yes; I want to go a little bit further with this situation. As I say, up to the fall of 1933 we were trying to get the steel code of the N. R. A. to do something, or give us some answer on this basing point situation and this price-control situation.

Along in the fall we began to hear rumors in the State that some of our customers had been approached and told, "You want to watch out. You will get in trouble if you buy from Ames." And then presently there came along regulations in the Agriculture Department. Let me say this, that the National Industrial Recovery Act—in title II of that act—appropriated certain sums definitely to be spent under the provisions of the National Highway Act. And the administration of the National Highway Act is under the Agriculture Department. That money was to be loaned to the States to be spent as the act passed by Congress, under the provisions of the National Highway Act. But when they came to putting that money out they imposed

upon the States a proposition to the effect that they should give a preference to those that had the "blue eagle." The act was very specific as to what requirements should be placed upon the States—I am speaking of the National Industrial Recovery Act—because it added to those things which were in the other act, such things about direct labor.

The highway department in the State of New Jersey, to whom we had sold for years all their reinforcing bars on their roads there, they said:

> Preference only means preference at a like price. Therefore, you put your bids in in a competitive bidding system, and if somebody bids the same price you do the other fellow will get it, but if you bid a lower price than the others, you will get it.

That went along just a little while. Then I do not know what stirred it up. There was a complaint that came, and under the highway thing it went through Albany, N. Y., for some reason or other, and then it came down there, and they asked us about it, the Highway Department of New Jersey, and we said, "We are conforming to the rates of pay of the steel code, and that we will go as far as we can go, but we are not going to enter into this thing which looks to us like a conspiracy to 'rook' the Government."

And here is where we are: The next thing that came along was the change in regulations along in January 1934 of the highway department, and instead of saying preference should be given to the "blue eagle", they said anybody who didn't have a "blue eagle" was excluded from furnishing this material. We spoke to our Senators here, and through their good offices, got a reply from Mr. Tugwell, the Assistant Secretary of Agriculture, and from a Mr. Gregg, and also from Mr. MacDonald. And the general tenor of the thing was that they did not think they could do anything for us because they were not going to interfere with the N. R. A.

And while we were battling that thing, along comes this Order 6646, Executive order of the President. And the Executive order of the President excludes down to the last limit from any participation in any work where Government money is put in any particular place any particular part anybody who has not got a "blue eagle." That order had in it the authority to the Administrator, at that time General Johnson, to grant exceptions when justice or the public interest required, but only on the recommendation of some governmental agency.

We then turned and went back to MacDonald of the road department and asked him if he would recommend this thing; we thought that the object was to lay as much roads and give as much work as could be given in laying roads, and if the price of materials was a little bit lower why it might give more work. But Mr. MacDonald declined to mix into the situation.

Then we cast around and went to Mr. Eastman, the Coordinator of Transportation. He had had his experiences which are mentioned here about railroad rails and one thing and another. And he had the railroads on his hands trying to produce economies of operation and to get them on their feet, coordinate their buying and all of that sort of thing, with the result that he went into the things and he made an application, or recommendation, to General Johnson that an exemption be granted the Ames Co. in this particular. That

thing was sent by General Johnson to the division of the N. R. A that had charge of the steel code. And I think from there it went to the code authority, and the answer we received was "no", and the answer that Mr. Eastman received was "no." It was not bluntly no, but there had not been enough reasons proven or something like that, to show why there should be an exemption.

So then we started in on our own hook with the N. R. A., and we went to the deputy administrator and the assistant deputy administrator.

Senator KING. Of the steel code?

Mr. KELLOGG. Of the steel code in the N. R. A. And we came down here and tried to argue this matter out, but we did not get very far on it. But we kept rumbling along, and finally after some time the matter got in the hands of Mr. Richberg. And Mr. Richberg wrote us a letter to the general effect that he did not see where it was in the public interest to give us the work where our help would be working under noncode conditions, and take it away from somebody where it would be worked under code conditions. That had not been the basis of our statement at all down here. We had said that we were from the beginning and that we could continue to comply with these code provisions provided we be granted this exception, that is as to the labor provisions, and the result of that was that finally we sent a telegram to Mr. Richberg.

Senator KING. As I understand you, you had been adhering to the code provisions with respect to the hours and wages from the beginning?

Mr. KELLOGG. We had been and we were willing to continue to do so.

Senator KING. Yes.

Mr. KELLOGG. And furthermore, one more step we were willing to continue to agree to do so. There is a big difference in that situation, but the conforming to a thing as it goes along to see how it works out, and agreeing to conform to any changes or alterations that may come into that situation during the course of time.

So that we sent this telegram to Mr. Richberg. [Reading]:

Answering your letter June 25 you do not understand our position. We have been and are complying with labor provisions of steel code and intend to continue to do so. Our workers are working under code conditions. The question is whether they shall be permitted to work at all. We are willing to certify compliance as to labor provisions. We are not willing to certify compliance as to other provisions nor to agree to the code as written because to do so would put us out of business. What we are asking is exception from the President's order. That order itself provides for exception and the President has repeatedly and publicly stated that where injustices occurred they would be corrected. Your letter indicates that in no case where a code has been approved will there be any corrections by exception from President's order. We do not believe that is the intent and are addressing the President direct.

On the same day we sent to President Roosevelt this telegram:

Referring Executive order March 14, and particularly paragraph 5 allowing exception, we respectfully say that we have been recommended for exception by the Federal Coordinator of Transportation. Our application for exception has been misconstrued to be for exception from the labor provisions of the steel code, which we are not asking. We are asking to be excepted from certification as to compliance with provisions other than labor. Our reason for calling this to your personal attention is that if Executive order is further enforced against us it will probably result in throwing 300 employees out of employment, and we appeal to you on their behalf as well as on our own.

The last communication to Mr. Richberg follows, and then we telegraphed the communication to Mr. Richberg.

The next that we heard in the matter was from the National Recovery Administration.

Your telegram of the 29th to the President has been referred to me for reply in that my office is charged with the administration of Executive Order 6646.

Please be advised that exceptions to this order do not relieve persons from the operation of the codes but merely permits contracting officers to refrain from requiring certificates of compliance from bidders or including in the contract a provision for cancelation in the case of a code violation.

Established policy as to exceptions from the operation of the order is to grant these only when the work to be performed or materials supplied are necessary to the proper functioning of the Government and it is impossible to secure them from any source which can furnish the certificate of compliance.

Then under date of September 4 we got our final ruling on this application addressed to Mr. James W. Ames, president W. Ames & Co., Jersey City, N. J., and signed by Hugh S. Johnson, Administrator.

Your letter of August 17 and your further letter of August 23, referring to your request for an exception from the provisions of Executive Order No. 6646, have received very careful consideration.

As Mr. Frank Healy, chief Government contracts branch, has written you in his letter of August 31, the established policy as to exceptions from the operation of Executive Order 6646 is to grant these only when the work to be performed or material supplied are necessary to the proper functioning of the Government, and it is impossible to secure them from any source which can furnish the certificate of compliance.

It is regretted, of course, that you are faced with a shutdown of your mill, but, as you know, the situation in the steel industry is such that many plants of those companies that are fully complying with codes are in a similar unfortunate position. It is my hope and expectation that conditions in that industry will soon improve.

Sincerely,

HUGH S. JOHNSON, *Administrator.*

Now we wrote back in response to those letters from General Johnson——

Senator KING (interposing). Could you not put it in the record, and just state briefly what it contains—put it in the record, or would you prefer to read it?

Mr. KELLOGG. Well, we acknowledged his letter. We referred to the receipt of the letter which I have already read from Mr. Frank Healy, chief of Government contracts branch, and then stated—

It is noted from these letters that our application is denied because contrary to established policy. We do not think the established policy as stated in those letters takes into consideration all the wording of section 5 of the Executive order that it ignores the reference to justice and limits the ruling to the sole question of governmental interest. We would further say that we do not believe that the Executive order is local, but we thank you for bringing the matter to a definite termination.

Now following on that the Ames Co., after careful consideration of the matter, decided that their only remedy in regard to this road work in New Jersey, which was being conducted to a degree with Government money, but being conducted under the management and control of the Highway Department of the State of New Jersey, insofar as the department was allowed to exercise management and control, was to institute a suit in the Supreme Court of the District of Columbia against those people who had to do with the road work, or with the dispensation of the money for road work. And those people were Secretary Wallace and Secretary Ickes and the chief of the road bureau, Mr. MacDonald.

That suit was argued on the 25th of last October. And after 14 weeks of holding the case the court, and in that week questioned the constitutionality of the law in various particulars, said that we had not alleged if we had gotten the work we would have made a profit, and that therefore we did not show that we were hurt by being excluded from this field of business, that anyway Congress had the power to say how the Government money should be spent. Another difficulty from our point of view with that opinion was this, that we had never thought that a man passed out from under constitutional protections because he was not making at the time a profit, or that the Constitution only protected those who were at the time making a profit. And the fact was in our brief we had very carefully argued the fact that the National Industrial Recovery Act nowhere gave the slightest indication that people who did not join codes were to be excluded from the money from business they might be entitled to under the act, nowhere did it give the slightest indication. In fact Congress laid down with great care what the requirements should be, and the requirements that were imposed by the Congress said nothing about the codes or materials or anything else for that matter. It said what should be done in the direct labor on the job, and that is all it said.

And since we have gotten that opinion we have appealed to the District of Columbia Court of Appeals, and we have also filed with the Supreme Court of the United States a petition for hearing, for certiorari before determination by the District of Columbia Court of Appeals. Now, that is the status as far as the Ames Co. is concerned in this situation.

Senator KING. You have not got the contract yet, have you?

Mr. KELLOGG. We have been totally excluded from any business anywhere any Government money is concerned, although we are perfectly willing to say and to do what the code requires in regard to hours of labor and rates of pay.

Senator KING. What prices were imposed or prescribed by those who did sell the steel for the road construction?

Mr. KELLOGG. Oh, the prices of road steel went up very materially.

Senator KING. Did you indicate in your application for the contracting the prices which you would charge under your contract? Did you have an opportunity? Did you get far enough along so you could indicate your prices?

Mr. KELLOGG. Why, no; because the regulation provides that no bid shall be considered that does not contain a certificate of compliance in all particulars with codes.

Senator KING. I understand. But did you indicate in your application that you were ready to name your prices and did you indicate what the prices were?

Mr. KELLOGG. We did not indicate in our application as to the road. What we did in one instance was in a bid—I have forgotten what governmental agency it was—we simply took our form and we crossed out the requirement for the certificate, and wrote in our own statement to the effect that we would comply with the hours of labor and rates of pay applicable under the code. We sent it in to them; the prices I believe were lower than any other prices, and the bid was returned to us as being informal, and the bid was rejected.

Senator KING. The prices which you indicated in that so-called "informal bid" were lower than those which——

Mr. KELLOGG (interposing). The contract was let at higher prices than our bid prices.

Senator KING. So the Government was the loser and the taxpayers the losers by the refusal of the N. R. A. or those various organizations to permit you to bid.

Mr. KELLOGG. Yes. For instance, I have here—I do not know that I can lay my hand on it immediately—but I have here with me an account of identical bids which went into the city of New York on some P. W. A. work that they had, money that they had gotten, and there were I think five bids which went in for this material. They were all identical in the situation. And the Messrs. Ames told me at that time if it had not been for the codes in the thing they could have saved the city of New York from four to five thousand dollars on that proposition. What they said was if it had not been for the codes altogether. Now, whether they could have saved them that much with the increase in the wages which were involved in the Ames Co. meeting the code requirements they did not state. But I know they could have bid lower than those contracts went for. And as an appendix, I believe, to the Federal Trade Commission report, which I take it to be before you here, in regard to this is the account of a very large sum that was bid for sheet piling out on the Coolidge Dam proposition.

The CHAIRMAN. Now, was there some other statement you wanted to make, Mr. Kellogg?

Mr. KELLOGG. Oh, in regard to the situation which confronted Ames at the time when the price of billets and raw material for Ames had jumped up, of course, economically, the answer of the Ames Co. might be—

> Well, if these people wont sell you billets at a reasonable price we will make our own. We will put in a melting capacity, and having melted it we will make an ingot and roll it down into a billet.

But, to look at the steel code in article 5, section 2, which reads as follows:

> It is also the consensus of opinion in the industry that until such time as the demand for its products cannot adequately be met by the fullest possible use of existing capacities for producing pig iron and steel ingots, such capacities should not be increased.
>
> Accordingly, unless and until the code shall have been amended as hereinafter provided so as to forbid it, that none of the members of the code shall initiate the construction of any new blast furnace, or open-hearth or Bessemer steel capacity.
>
> The President may however suspend the operation of the provisions of this section.

But if you expect to get anything out of the code authority on that, you have got to look further into the code and find that this code can only be amended by a 75-percent vote and that means that one outfit, the United States Steel Co., can defeat any amendment, because they have got more than 25 percent to vote against it right in their own industry.

The CHAIRMAN. The committee thanks you, Mr. Kellogg. That finishes your statement?

Mr. KELLOGG. I have received the following letter:

BANCROFT & MARTIN ROLLING MILLS CO.,
South Portland, Maine, March 20, 1935.

W. AMES & CO.,
Jersey City, N. J.
(Attention Mr. Ames.)

DEAR MR. AMES: Confirming conversation of today, we understand that you are in hopes that your attornev will be able to present your case against the basing-point system before the Senate committee now investigating the iron and steel code. We are in complete sympathy with your stand against the basing-point system, particularly that part of it that prohibits the saving effected by water transportation.

As you know, for many years we purchased billets on a f. o. b. mill or f. a. s. vessel alongside-mill-dock basis, and moved the billets to Portland by water transportation. Our cost was an average $1 per gross ton. Under the code we are charged an arbitrary Buffalo freight rate of $5.50 per gross ton. This has increased our cost approximately $4.50 a ton, and as you know any such increase makes the rolling of bars from billets prohibitive, and as a consequence we are practically out of business as far as rolling from billets is concerned.

As members of the code, we petitioned the board of directors for relief requesting a reduction in the price of billets delivered by water transportation as provided in section E of the code. This petition was submitted in February 1934. After considerable correspondence and telephone conversation we were finally granted a hearing before the board of directors in May 1934 and presented our case personally. There was no real opposition to our request and the chairman of the board promised us a decision the following day. We have not received that decision to date.

We now have applied for special consideration and were promised that our petition would be presented on March 13, and although we have requested that we be notified of the action of the committee, we have not received an answer.

There is no question in our minds but that the board of directors could not find proper grounds for the refusal of our petiton and decided to accomplish the same end by refusing to grant any decision.

There is no question but what this phase of the steel code tends to put the small mill out of business and as long as the steel code is dominated by the larger mills, we have no chance for any relief.

We have no objection to your attorney, in presenting your case, referring to our situation which is similar to yours as a concrete example of the effect of the code and the basing-point system on the small mill.

We read with a great deal of interest a pamphlet issued by the steel code giving excerpts from letters from various mills stating their opinion on the basing-point system. In our own case, we wrote a letter answering their questionnaire. They telephoned us to ask permission to quote one phrase from our letter, but did not care to publish the whole letter. We refused permission, stating that such a procedure would not give a true intent of our answers. If the excerpts as published left out the pertinent parts of the writers' letters, then their pamphlet is misleading to say the least.

Very truly yours,

BANCROFT & MARTIN ROLLING MILLS CO.,
(Signed) K. T. BURR, *Treasurer.*

The CHAIRMAN. The committee will next hear Mr. Paul Fishback. Mr. Fishback represents the National Food Brokers Association, of Indianapolis, Ind.

(The following letters were subsequently submitted by Mr. Kellogg:)

MARCH 30, 1935.

UNITED STATES DEPARTMENT OF AGRICULTURE,
County Building, White plains, N. Y.
(Attention Mr. Cronin.)

Re: Japanese beetle trap standards.

GENTLEMEN: Confirming yesterday's telephone conversation between Mr. Cronin and the writer, we offer: 10,000 pieces ½-inch rod by 7-foot beetle trap standards at 12½ cents each if black steel or 20 cents each if hot galvanized. All f. o. b. cars mill Jersey City; or if shipped in carload quantity to St. Louis, Mo., at 2½ cents each additional.

We propose furnishing standards the same as we have made up in previous years for the Department of Agriculture, namely, rods to have 7-inch right-angle bend at one end with small hole for inserting trap handle, other end to be pointed.

In view of the fact that our company has not signed an N. R. A. code we cannot certify as to compliance. We can, however, furnish an affidavit that we are conforming to hour and wage provisions of the Steel Code. Our objections to the Steel Code have been properly presented to the Steel Code authorities, the National Recovery Administration, and other appropriate Government agencies. No decision has as yet been arrived at in our case. However, it is possible that you may be able to arrange to procure this material from us.

Yours very truly.

W. AMES & Co.,
———— ————, *Treasurer.*

APRIL 3, 1935.

UNITED STATES DEPARTMENT OF AGRICULTURE,
County Building, White Plains, N. Y.
(Attention: Mr. Cronin.)

Re: Japanese beetle trap standards.

GENTLEMEN: Confirming this morning's telephone conversation between Mr. Cronin and the writer, with regard to our quotation of March 30, on 10,000 pieces ½-inch beetle trap standards.

If these standards are to be dipped in black asphaltum paint, the price would be 13½ cents each f. o. b. our mill Jersey City.

This price, of course, is based on making up the entire quantity at one time and shipping promptly thereafter.

Will you kindly let us know if we are to be favored with the business and oblige,

Yours very truly,

W. AMES & Co.,
T. S. AMES,
Treasurer.

UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE,
White Plains, N. Y., April 3, 1935.

W. AMES & Co.,
Jersey City, N. J.
(Attention Mr. Ames, Treasurer.)

GENTLEMEN: Thank you for your letter of March 30 quoting prices on steel beetle-trap standards.

It is the opinion of those who handle such matters here that we could not procure this material from you because of your inability to certify as to code compliance.

Very truly yours

T. C. CRONIN,
Assistant Plant Quarantine Inspector

STATEMENT OF PAUL FISHBACK, EXECUTIVE SECRETARY OF THE NATIONAL FOOD BROKERS ASSOCIATION, INDIANAPOLIS, IND.

(The witness was duly sworn by the chairman and testified as follows:)

Mr. FISHBACK. Mr. Chairman, and gentlemen of the committee, I am Paul Fishback. As executive secretary of the National Food Brokers Association I appear before this committee representing approximately 1,000 food-broker concerns of the country, with probably not less than 6,000 employees, salesmen, clerks, and so forth. Our members are not tied up in any way with trade buyers. They act as sales agents in a given territory for manufacturers, canners, processors, refiners, and so forth, of food and other grocery products for a sales commission ordinarily called "brokerage."

Senator KING. What is the total amount of your sales per annum of the 1,000 brokers of whom you represent?

Mr. FISHBACK. Our members will sell approximately 2½ million, or I mean 2½ billion dollars worth of food and grocery products to the wholesale trade.

Senator KING. Are your brokers scattered throughout the United States or are they congested?

Mr. FISHBACK. Oh, no. They are scattered all over the United States, principally in distributing centers.

Senator KING. Selling to wholesalers or retailers?

Mr. FISHBACK. We sell wholesalers and chain organizations and to manufacturers for reprocessing into a finished product.

Senator KING. All right; go ahead.

Mr. FISHBACK. They have, without a dissenting voice, been waging a fight shoulder to shoulder with the independent unit in the food industry, be he manufacturer, wholesaler, or retailer, to rid the industry of evil and unfair practices which have been rampant, subsequent as well as shortly prior to the enactment of the National Industrial Recovery Act.

These evils practices have uprooted fair competition, sowed the seeds of monopoly and unfair and unjust competition, and have contributed tragically toward the destruction of the small independent unit in the food and grocery industry, including the food broker. I hope in my testimony to point out some of these unfair practices which have been particularly prevalent. Further, to reveal to this committee the necessity for the enactment of some legislation which will write the word "finis" to this unhealthy condition and place the food and grocery industry on a plane where the small independent has an equal opportunity, as he has the right, to exist with the large and powerful unit.

Senator KING. Did he have that opportunity before 1929 and up to 1929, generally speaking?

Mr. FISHBACK. Up to 1927 was about the date when the bad break came, Senator.

Senator KING. Oh, yes.

Mr. FISHBACK. The food broker, as he is known in this industry, has a contractual relationship with his principal, the seller. He keeps the latter informed of market conditions, credit condition of buyers, and other matters. He finds a buyer for the seller's products, and when the sale is completed his only compensation is a commission on a small percentage basis. This is his only compensation for the service he renders his principals.

Only a few of the larger sellers are financially able to maintain their own sales force. The food broker is the exclusive sales agent of his principals, the sellers, in a given territory. The smaller seller must absolutely depend upon his food broker to sell and distribute his products. The independent wholesale buyer must depend on him as a source of supply. For these reasons the economic fact has been established that the legitimate food broker is most necessary as a link in the chain of food distribution.

Note that the food broker is a sales agent. He is not a broker as defined by the dictionary. He sells only for the amount of certain principals with whom he has the contractual relationship. He is never the agent or representative of the buyer, nor does he seek sellers for and on account of the buyer.

The files of the National Recovery Administration are replete with letters from small independent units pleading with the Government to take the necessary action to preclude the destruction of the food broker, for they know such a loss would mean their destruction as well. His destruction means not only a personal loss to him, but a tremendous loss to the entire industry because it would mean the striking down of the prop upon which the small seller and buyer leans. Because he is in daily contact with sellers and buyers of all sizes, he is in an unusual position to view from a front seat the insidious practices perpetrated by certain members of the industry which so strongly tend toward monopoly and unfair competition. He sees and hears evidences of it daily.

The grocery industry is shot through and through with unfair and unjustified price discriminations. They bear various names. They are discounts to large buyers having no justification. They are excessive discounts for quantity. They are excessive or unearned advertising allowances. They are allowance of sales compensation to buyers or buyer-owned or controlled organization where none is or can be earned.

Senator KING. You are speaking now of practices permitted and authorized, if not commanded by the code?

Mr. FISHBACK. On the contrary, sir, I am speaking of practices which are prohibited by the codes, and which are not being prevented because some codes are not being fully enforced.

Senator KING. Are you complaining of the codes?

Mr. FISHBACK. I am complaining more of the lack of enforcement of the codes, sir.

These discriminations are made because the power of large buyers can coerce the sellers. The word "extort" might just as well have been used. Large corporate buyers, whose business seems to be desirable, impose their own terms of purchase upon sellers. By their very strength and power they exact concessions which the seller cannot make to all customers, and discrimination results. The seller, large or small, feels that he must yield to the pressure, even though lack of profit or actual loss results. He does not want to put himself in the position of being excluded from all future consideration by the large buyer, because he refuses the demanded concessions. He not infrequently charges a higher price to the small buyer in order to make up for these concessions to the big buyer.

To make the picture complete, let me give you a brief history of the development of conditions which have brought about these systems of price discriminations which have made the strong more powerful, and have made the weak reach a desperate condition. The definite trend toward monopoly is clear in this history. The relationship of the N. R. A. code procedure, with its hope of success and its failure to cure price discriminations is shown. At the conclusion of this statement I will submit a definite recommendation for clearly indicated and essential legislative correction of a condition which must not be permitted to continue.

About 10 years ago the largest of the corporate chain grocery organizations established buying offices at the central points of supply of the principal staple canned fruits and vegetables. These offices were charged by their owner with the duty of obtaining adequate supplies of merchandise of the required quality. Primarily these

buying offices were instructed to buy at the lowest possible price. This brought about unjustified discounts and excessive quantity discounts.

Senator KING. Let me see if I understand you. Your organization, the brokers, are objecting to chain stores, or large purchasers making direct purchases from the manufacturers? You want all the purchases to come through your brokers?

Mr. FISHBACK. Not necessarily, Senator.

Senator KING. Is not that your philosophy?

Mr. FISHBACK. That is not our philosophy. We want all purchases made upon an even, fair competitive basis, whether they be directly from the manufacturer, or the manufacturer sells his product through our people.

Senator KING. I may have misunderstood your thesis. Are you not objecting to large purchases being made by large purchasing agencies from the manufacturers, which would result in a diminution of the purchases to be made by the brokers, and to that extent diminish their sales?

Mr. FISHBACK. Only indirectly, sir, in that those large purchases made directly from the manufacturers and at discriminatory prices put the small independents into a perilous position and jeopardizes the fair competition throughout the entire grocery industry.

Senator KING. And you think that under the code there have been practices permitted under the terms of which the industry purchaser or consumer would be put out of business?

Mr. FISHBACK. Yes.

Senator KING. I see.

Mr. FISHBACK. Having obtained the lowest possible prices and the maximum discounts, the buying offices demanded that which they termed "brokerage" on their purchases, contending speciously that they were acting as food brokers and, therefore, entitled to be paid a selling compensation for buying that which their owner, the large chain, wanted, needed, and must have to operate its business.

It is to be noted here that brokerage, as known in the food industry, is nothing but a sales compensation for a sales service rendered the seller.

It is elemental that a buyer renders no sales service to the seller. It is equally elemental that the buyer's agent can render no sales service to the seller. The interests of the buyer and the seller are definitely adverse. I have seen a decision of the United States Supreme Court which states the principle in the following language:

> Necessarily the agent for the buyer cannot be the agent for the seller at the same time.

It is quite clear and so recognized in the industry that this payment of brokerage or sales compensation to buyers is, in fact, a special price concession available only to those who can exact it. Big buyers and buying groups have set up their agency in the disguise of a food broker to get this sales compensation. It has become a racket in the industry.

For example, it was about the time this grocery chain established its buying offices that certain promoters convinced independent wholesale grocers that to compete successfully with the corporate chain grocers they should ape the chains in some of their methods. The first step was to ally to themselves a group of their customers who

would model all of their retail stores upon a uniform basis of shelving, stock arrangement, store fronts, and the like, to resemble the corporate chain. There was to be community advertising of special sales, and specially priced "loss leaders" to compete with the corporate chains. This development became known as the "voluntary chain" and originated as a merchandising experiment. It is noteworthy that when group buying, to exact preferential and discriminatory discounts and allowances, entered the activities of these original voluntary chains, the charge to the wholesale grocer for a franchise to operate as a member of the voluntary chain group rose greatly and rapidly in price.

While this movement developed slowly, a new figure came abruptly into the picture. At the annual convention of 1 of the 2 national associations of wholesale grocers in 1927, some 30 independent wholesalers banded themselves into a service corporation for the sole purpose of opening a buying office at a central point where purchases of all of the members of the group could be concentrated. The primary purpose of this buying office was to exact sales compensation from the seller on the purchases made for its owner. Naturally, consolidated orders meant volume, which was used as a leverage to exact the lowest possible prices and the greatest possible discounts and allowances from sellers before the sales compensation was exacted.

By 1928 or 1929 the original voluntary chains had changed their procedure to meet this situation and began to group the orders of their members in order that they, too, might exact discriminatory discounts, allowances, and an unearned selling compensation.

With such a chaotic condition confronting the industry, a sincere attempt was made by a representative group of manufacturers and distributors, including the food brokers, to effect a cure and rid the industry of many methods of unfair competition, through a trade-practice conference set up under the auspices of the Federal Trade Commission. An adequate set of definitions and rules was adopted, and subsequently approved or accepted by the Commission. Effective enforcement of these rules was postponed, because it was desired by the industry that there be an accurate and informed study made of price differentials within the industry, and this study was undertaken by the Brookings Institution in 1931.

While this study was in progress, and after the second of the sectional reports had been made by Brookings, the attention of the industry was diverted by the proposals for a "new deal", including a law which would control the unfair practices of the "recalcitrant minority", which law became the National Industrial Recovery Act.

Within a month after the law became effective the various elements of the grocery industry began the construction of an over-all, or basic, or master code, as it became known. Such a code had been recommended as essential by administration officials. A code was drafted and approved by the representatives of several branches of the industry, including manufacturers, food brokers, wholesalers, chain grocers, voluntary chain operators, retailer-owned wholesale groceries, and independent retail grocers. The master code went through many trials and tribulations, amendments, and revisions, all due to the desire of one of the other of the groups involved in its promotion to protect their special interests and advantages. Even-

tually it was filed with the Agricultural Adjustment Administration, which had been given jurisdiction over all food trade codes. There was a public hearing and many rewritings by the industry and the Administration, but no completed code.

However, all of the discussions leading up to the drafting of the code, during the public hearing and thereafter in the post-hearing conferences, brought into the light of open day those discriminatory practices which had theretofore been secretive between sellers and chiseling buyers, although generally known to the entire trade as existing. As these practices come into the light and one branch of the industry learned what another had been able to coerce, there seemed to be a mad scramble for all to profit by special privilege rather than by legitimate service and merchandising.

The master code was eventually, in December 1933, sent back to N. R. A., where it was decided that it should be broken down into 3 or more codes, at least 1 each for the distribution functions of the manufacturers, for the wholesaling and for the retailing of food and grocery products. Codes for the wholesalers and retailers were soon completed. Various branches of the grocery manufacturing and processing industry, being dissatisfied with the delay or with the provisions of the basic code still under consideration, took steps to set up separate codes for their own branches of the industry. One by one these codes took shape and were approved. The basic code, after many vicissitudes, was approved in September 1934, effective to control only those who accepted it or who, as an industry, asked that it be applied to them.

Today the industry finds itself in this position—there are in existence 60 approved codes covering the various phases of grocery manufacturing and distribution. In 18 of them are specific clauses prohibiting the payment or diversion of sales compensation or brokerage to buyers. In most of them there are specific clauses aimed at the elimination of unfair price discrimination, unfair allowances, rebates, bribery, and concessions or providing for fair and open pricing of products without collusion or price-fixing.

The inference is clear that industry in all of its branches earnestly desired to place all competitors upon the plane of fair competition. It is evidence that the proponents of codes under the N. I. R. A., took it for granted that this law afforded industry an opportunity, long desired, to clean house and to keep the house clean.

The tragedy is, and it is tragedy, that there has been so little enforcement of the price-discrimination provisions that do exist in many of these codes. In the first place selfish groups within the industry prevented the incorporation of sound trade-practice provisions which would deprive them of special consideration. The implication or threat of reprisal by buying groups who had been enjoying special privilege had its effect. Failure of enforcement can be laid to many causes. One is the lack of uniformity of the fair trade practice provisions in the 60 food and grocery codes. Another is the lack of an aggressive and clearly defined N. R. A. policy. Still another is the deliberate or innocent ineffectiveness of code authorities.

Regardless of the cause for unenforcement of code provisions which would stop unfair methods of competition, and particularly price discrimination in all of its phases within the grocery industry, the fact remains that price discrimination has grown apace in the past 2

or 3 years. With its growth has come a well-defined tendency toward monopoly and the discouragement if not destruction of small enterprise.

First we have the large corporate chain which if not monopolistic in fact has the power of and tendency toward monopoly. Then we have the buying groups formed to follow the buying methods of the corporate chain and reaching for its price-discrimination advantages which lead toward monopoly. Next come the voluntary chains with their group buying and demands for price preferences not available to others. Lately the retailer-owned wholesalers established a buying office to reach for the same advantages understood to be obtained by their corporate competitors. One of the latest developments is the organization of a buying office by a combination of five large corporate chains.

Not one of these special enterprises could continue in its favored and uneconomic position if the codes of all of the major branches of the industry were fully and effectively enforced.

The CHAIRMAN. Mr. Fishback, is there a part of that statement you would put into the record and give to the committee your constructive suggestions? We have other witnesses here this afternoon and we want to finish with them.

Senator LONERGAN. Tell us what your remedy is and put the rest in the record.

The CHAIRMAN. I am inclined to think you should do so because the committee will read it, and if you will just tell us succinctly what your constructive suggestions are, the experts will go over the criticisms as well as the committee, and we will get along, because it is going to be impossible for us to give everybody an opportunity to speak on every phase of this proposition and give unlimited time if we expect to get through here in time to take action.

Mr. FISHBACK. If you, Mr. Chairman, and the gentlemen of the committee will allow me, I have just 3 or 4 pages in which I have some constructive suggestions.

The CHAIRMAN. All right.

Mr. FISHBACK. And I will give the balance of this statement to the reporter for the record.

(The balance of the statement referred to is as follows:)

I should be clearly understood that this witness and those whom he represents have no criticism of, or quarrel with any form of merchandising in the food and grocery industry. The corporate chain, the wholesaler, the retailer, the voluntary group, and retailer-owned wholesaler all may, and probably do, have economic justification for their existence. But not one of them, nor any form of enterprise in this, or any other industry, has any right to an existence made possible only by the coercion or exaction or extortion of special and discriminatory concessions from suppliers.

While it has been said that some industries have failed to attempt the enforcement of code provisions because of uncertainty, and they have undoubtedly been honest in their belief that there could be no enforcement, there are outstanding examples of effective codes effectively enforced for the public good. The code for the wheat flour milling industry is an outstanding example of courageous and earnest enforcement. In this industry price discrimination, payment of sales compensation to buyers and buyers organizations and advertising allowance are prohibited without reservation.

By way of contrast is the code for the canning industry. There is no apparent effort to enforce price discrimination provision. It is concerned with those relating to hours and wages, commendable enough, but inadequate if the rank and file of the industry may not be protected against the coerced unfair practices that prevent them from obtaining a sufficient price for their product to pay

the wage scale to an increased number of employees. Efforts of administration officials to make the code for the canning industry complete met with the resistance of representatives of the industry who openly said that they feared the reprisal of large customers, if, through a code of fair competition, they deprived these customers of their special, discriminatory, and unearned preferences.

There was just cause, perhaps, for this fear of reprisal. There is the case of a manufacturer of a specialty product who expressed his opinion to the N. R. A. with respect to certain price discriminations which should be prohibited by the master code. Within a short time after his letter had been sent to the administration in Washington, a contract with a large chain corporation for a mutually supported campaign of advertising and merchandising the manufacturer's product in a large metropolitan market, was summarily canceled 4 days before the campaign was to have been started and the order for the merchandise to support the campaign was rescinded.

This whole picture has endeavored to make clear that, because of unfair and unwarranted price discrimination, concessions, discounts and allowances, there has been a growing tendency toward monopoly and monopolistic practices in the food and grocery industry—the industry of providing the sustenance of mankind—an industry in which the thought of monopoly is unthinkable and most repellant. The big enterprises get more favors and having gotten them, demand yet more. The smaller units combine to attempt to reach the stature of the big fellow that they may make like demands.

The independent sellers, even the largest of the manufacturing corporations, find it difficult, impossible, or inexpedient at times to resist the demands. They must yield. The smaller seller must seek the safety and security that may come from the combination of others of his size and kind. In one direction lies monopoly of distribution—in the other monopoly of production and manufacture.

The logical conclusion is combinations, formed first for self-protection against the demands of combinations of customers, but being manufacturers and being united, in perfect position to control the price paid to the producer for raw materials. In such a situation, agriculture will pay the bill. Growers of canning crops are already paying it.

The combinations leading toward monopoly in distribution, formed originally to exact concessions from sellers, can and undoubtedly will control resale prices, and when competition is destroyed the consumer will pay.

In between is the small independent manufacturer, and the small independent distributor, wholesaler, retailer, or chain, because there are small local chains as well as the large corporations. These small ones are vastly important in a scheme of fair competition in the production and distribution of the Nation's food. Being small, they present no important consideration in the formation of the combination leading toward monopoly. They are therefore snubbed, ignored, and eventually squeezed out of existence. The competitive system suffers and monopoly grows.

Any tendency toward monopoly either in distribution or manufacture, resulting from special privileges not available to all, is economically unsound in our free competitive system. Yet, in the grocery industry the tendency has been clear and definite. It has made progress rapidly during the past 18 months, and the little fellow has suffered in this welter of confusion over the N. R. A., its future, its enforceability, the failure of enforcement of some codes which approach a cure, and its widely diversified statements of principle affecting the same evils.

Mr. FISHBACK. It is the conviction of the food broker—a conviction shared by many other elements of the grocery industry—that if unfair price discriminations are prohibited in the food and grocery industry, and special privileges, discounts, and allowances are taken from the large and powerful, the growth of monopoly with its attendant evils would be checked and the small enterprise would be given a better opportunity to live.

It is the conviction of the food broker, a conviction shared not only by many other elements in the grocery industry but in other industries as well, that the N. R. A. program and plan, with the revisions and strengthening, the need for which has been made evident in the 2 years of its life, incorporated in a new law be continued for at least another 2 years. Further check of trial and error must be had by

business and labor, by producer and consumer. The idealistic merit of the plan must be realized. The errors of planning or administration must be eliminated.

At the end of another 2 years the Nation should know whether or not there should be further and permanent legislation to insure really fair competition in industry, and should know the form it must take to be fully effective.

It is the recommendation of the food brokers that in the draft of a new law to extend the life of N. R. A. for at least 2 years, recognition be given the fact that it is imperative to incorporate provisions expressly prohibiting all forms of unfair price discrimination. The legislation should specifically prohibit certain well-defined forms of price discrimination by name, such as (*a*) allowances, discounts, concessions, or rebates, and so forth, for alleged services which are not performed, not possible, not practicable, and not capable of being audited; (*b*) payment of sales compensation by a seller, d rectly or indirectly, to a buyer or a creature of a buyer; (*c*) allowances, discounts, concessions, rebates, and so forth, not made equally available to all (recognizing of course, sound, and practical wholesale and retail differentials).

The law should, in addition to authority given a proper administrative department of the Government to enforce its provisions, confer the right upon injured parties to bring an action for damages against the offending party.

The law should recognize the difficulties and the inequities which have arisen during the time since June 16, 1933, as a result of failure of, or uncertainty concerning enforcement or compliance, and should therefore devise specific, more direct, and definitely controlled enforcement measures.

The law should, in our opinion, make it unlawful for a trade buyer or a creature of a trade buyer to solicit, demand, or accept sales compensation or brokerage.

No attempt has been made here to submit the specific language of clauses which might be made part of the new law covering these several suggestions. If the committee wishes, we will undertake to draft and submit that which we believe will be adequate for the purposes.

There are some other observations here that in deference to the time of the committee I will submit as a part of the record and for the file.

(The other observations referred to are as follows:)

We feel that here, before this committee, we speak not alone for the food brokers. We give voice to the thoughts and desires of thousands of small manufacturers and distributors who have not the means nor the ability to come to Washington. Or, worse, they fear to come and speak their minds lest they suffer the reprisal of those who profit by preferences at the expense of these little fellows.

The food broker is in a position to know whereof he speaks. He is free to speak because, unlike the manufacturer or distributor, he has no great capital investment. The investment of the manufacturer and distributor gives him good reason to pause, before he sticks his neck out, before he subjects himself to possible and destructive reprisal.

In conclusion, I would like to make it clear that it is our sincere conviction from facts which we know that the prevalent and growing practice of unfair price discrimination in favor of the large and powerful buyers and buying combinations is fast leading to monopoly—with all its attendant evils, coercions, and oppressions. It is our sincere conviction that it is leading to the discouragement, if not the destruction, of the independent business unit in the food industry.

I also submit to you that the worst and most prevalent of the unfair price discriminations which has been developed into a racket in the industry is the payment or allowance of sales compensation to some powerful buyers or buying combinations. It is this latter racket we are convinced could and should be stopped immediately. The N. R. A. officials are fully informed of this racket. They have complete evidence before them. In fairness to the division administrator in charge of the food codes and to the N. R. A. officials, we have been assured that they are working on ways and means of stopping it. Our complaint is that it has taken them so long to do it. They express to us the hope and purpose of solving the whole problem of unfair price discrimination at one time. We believe it should be stopped but we submit that this one evil which has developed into a racket in the industry—that is, the payment of sales compensation to buyers—could and should be stopped as one step in solving the whole problem. It could and should be done now.

We think the experience of the N. I. R. A. administration of the past 2 years makes it imperative that the Congress give to the Federal Trade Commission a mandate and adequate authority to proceed immediately against the unfair trade practices which are so clearly and definitely leading to monopoly and the destruction of small business. This is a necessary and essential safeguard to make sure that present conditions will be corrected in spite of and notwithstanding administrative delays and difficulties that are bound to continue as codes are being perfected and the enforcement thereof adequately developed.

And, finally, we most earnestly urge that in all legislation the buyer be made equally guilty with the seller upon all violations. The need for this latter legislation is quite apparent. The coercive power of monopolitsic buyers and buying groups is the major cause of the present intolerable situation. And, too, the legislation should give any person in the industry injured by a violation of the law the right to sue and recover adequate damages.

The CHAIRMAN. I thank you very much, Mr. Fishback.

The CHAIRMAN. The next witness we have is Mr. W. C. Martin.

STATEMENT OF W. C. MARTIN, PRESIDENT OF THE SOUTHERN ASSOCIATION OF STEEL BUYERS AND CONSUMERS, OF BIRMINGHAM, ALA.

(The witness was duly sworn by the chairman and testified as follows:)

The CHAIRMAN. How much time, Mr. Martin, do you think it will take you?

Mr. MARTIN. Not very long. Senator Black said he wanted to hear my testimony.

The CHAIRMAN. I wish you would get Senator Black in here, Mr. Clerk of the committee, if he is not busy on the floor.

All right, Mr. Martin, you may proceed. You are president of the Southern Association of Steel Buyers and Consumers, of Birmingham, Ala.?

Mr. MARTIN. Yes, sir.

The CHAIRMAN. All right. You may proceed.

Mr. MARTIN. We represent practically all the steel buyers and consumers. That means manufacturers in the southeastern section of the country.

We have made a protest to the Federal Trade Commission of the $3 differential that the Steel Corporation, and other steel corporations charge for steel in Birmingham over the base price they charge in other sections of the country because we maintain that the cost of production does not justify the additional charge that they make.

In the code the steel industry has set up what they call basing points. Pittsburgh is the only real basing point, or the low-priced basing point. And they have set up a basis in Chicago where it is $1 over Pittsburgh, and in Birmingham, $3, and other points similar increases over the Pittsburgh base.

The CHAIRMAN. Birmingham is not a basing point?

Mr. MARTIN. Birmingham is a basing point? No, sir, they call it a basing point, but they charge $3 a ton for practically all the steel they sell to fabricators and jobbers in Birmingham over the Pittsburgh price. On material which they use in their own manufacturing they sell—or all materials which they sell—direct to the railroads, such as track spikes and tie plates and rails and other materials going into railroads, they sell at the same price as they do in Pittsburgh.

And in setting up the various basing points, as Mr. Ames suggested in his testimony, while they raise the price of bars $10 to consumers like myself and a great many other manufacturers, they left the price of track spikes and track bolts at the same prices as they were before N. R. A. started.

Before the N. R. A. started this situation did not exist as it does today. At that time the Tennessee Coal & Iron Railroad Co., which was a subsidiary of the Steel Corporation, maintained competitive conditions with all manufacturers and users of their product. In the bolt and nut industry the situation was very much worse than it is in the fabricating industry. The bolt and nut industry have not a code, and although they buy the material on a code price and they have the hours and the labor of the N. R. A., and all of them have signed the President's Reemployment Agreement and have the N. R. A., all that I know, while they sell their product in the open market, and it has been selling in recent months at a lower price than it has since the war, the large companies like the Bethlehem Steel Co. and the Steel Corporation are not affected by the fact that the basing points are different in one section than in the other, because they have so many plants and they also have fabricating plants and bolt-manufacturing plants in which their rolling mills furnish all of the material. The Bethlehem Steel Co. owns the McClintic-Marshall Co., and they own a bolt- and rivet-manufacturing plant, and they own shipbuilding plants, and they did own a car plant; I do not know whether they do now or not.

They supply all the bolts, rivets, and spikes, and other things that go into the manufacture of these ships, structures, and structural steel bridges and cars, and they roll their own bars and sell them to their own plants.

And while the bolt manufacturers do not have a code, they get out and cut the price on the finished products. They do that same thing on fabricating materials. That is set forth very clearly in the Federal Trade Commission report to the President on the basing points.

The CHAIRMAN. We have that before us.

Mr. MARTIN. And while we think that basing points are necessary, that you are going to have basing points of some kind, they certainly should be consistent. They should not have Birmingham, for instance, as a basing point on all the manufactured articles that the Steel Corporation makes, the materials which I just mentioned, for bars and fabricated materials and sheets and stuff that manufacturers buy from them, on which they charge $3, or the Pittsburgh base, which handicaps Birmingham and the southeastern manufacturers, and keeps them out of other sections of the country, makes them subject to dumping from other sections of the country. And the worst dumper in this particular section of the country is the Bethlehem Steel Co.

I have an *Iron Age* here of March 21, which shows the contracts that were let during that week, and all the large jobs were secured by the Steel Corporation or the Bethlehem Steel Co. And in the Federal Trade Commission report they claim that the McClintic-Marshall Co., which is owned by Bethlehem and the Steel Corporation, get 50 percent of all the structural-steel buildings, and very often very much below what would be the code price of steel plus the expense of manufacturing, plus the overhead.

The CHAIRMAN. Do you belong to the code?

Mr. MARTIN. Yes, sir. We do not have a code ourselves, but we have tried, and we have spent several thousand dollars trying to get a code. And there is a notice here from N. R. A. on April 1, in the April 1 issue of the Steel Magazine which said that the bolt code had been suspended, or, rather, had been put off until the basing points had been signed.

We signed the President's Reemployment Agreement.

The CHAIRMAN. You maintain the wages and hours of labor?

Mr. MARTIN. Oh, yes; we do that; and we have the "blue eagle."

The CHAIRMAN. Do you believe the code, or this N. R. A., should be extended, or should stop June 16?

Mr. MARTIN. Well, unless we can be treated more fairly than we have been before, I do not think it should be extended. You see, we have bolt manufacturers—that is my business; I have a bolt-manufacturing plant at Birmingham.

The CHAIRMAN. How many men do you employ?

Mr. MARTIN. One hundred and twenty-five.

The CHAIRMAN. Have you increased it since the code?

Mr. MARTIN. No, sir; we have decreased it.

The CHAIRMAN. Decreased it since the code?

Mr. MARTIN. Yes.

The CHAIRMAN. Why?

Mr. MARTIN. Lack of business.

The CHAIRMAN. Lack of business?

Mr. MARTIN. And bad prices. I have a report here from one of my salesmen at Kingsport, Tenn., on the Dobyns-Taylor Hardware Co. Mr. Bonsack told him he bought a carload of bolts in December at $750 under the cost. This story was told to him by the seller of the bolts.

I have a letter here from the Ferry Cap & Set Screw Co., of Cleveland, Ohio. They said they quit manufacturing bolts because of competition and the selling price was so demoralized.

Then the Bethlehem Steel and the Steel Corporation fabrication companies, when they take—there is 400—let me change that. There are four to five hundred fabricators in the United States, and these two concerns, who are not affected by the basing points, get almost 50 percent of all the fabricated jobs.

The CHAIRMAN. They have done very well, have they?

Mr. MARTIN. They should have. They have not shown very much profit, but they have got a great deal more of the business. If they have not done very well, you can imagine what the fellows who have been bidding against them have done.

The CHAIRMAN. I think, Mr. Martin, the committee understands your contention with reference to this basing point and this matter with reference to these fabricated articles.

Mr. MARTIN. Do you understand the reason why we have not got a code? I would like to tell you why we have not got a code.

The CHAIRMAN. Very well.

Mr. MARTIN. We applied and the N. R. A. officials would not give us a code on the same basis that they gave the large steel companies a code. They offered us a code at one time and the reason we did not accept it, or the large bolt manufacturers would not accept it, they had different wage provisions in that from the steel code.

The CHAIRMAN. Higher wages?

Mr. MARTIN. Higher wages, yes, sir; higher wages and the same hours.

The CHAIRMAN. Do the men that work in those plants—are they more technical, are they higher and more skilled labor than the others?

Mr. MARTIN. No, sir; the same type of labor.

The CHAIRMAN. The same class of work?

Mr. MARTIN. The same type of labor in the steel manufacturing business as it is in the other.

And the bolt associations have been to Washington. They have kept a man here for almost the last 15 months, attempting to get a code, in order to be able to operate and make some money out of it. And, of course, they would be very much against it, and I doubt if they could go along on a code unless they are going to be protected in their sales as well as they are in their labor; I mean, if they could not go along they would have to be closed up. That would be like the prohibitionists. They would violate the law in spite of what the Government could do, because you cannot get blood out of a turnip; you have got to make more money than you spend if you are going to stay in business. You cannot buy your material on a code price, hire labor on code prices, and sell in the open market at less than cost, particularly when some of the larger concerns are selling bolts at, say, $700 under their cost. When they eliminate all the small bolt

manufacturers, then they could put the prices up and go right along with the business and make it back in a short time.

The CHAIRMAN. Are there any further statements you desire to make? If there is any further statement, Mr. Martin, and you want to elaborate on this statement by inserting it in the record, we would be glad for you to do it.

Mr. MARTIN. That is about all I have to say, Senator.

The CHAIRMAN. The next witness is Russell E. Watson of the Chicopee Manufacturing Co., of New Brunswick, Ga. You may proceed, Mr. Watson.

STATEMENT OF RUSSELL E. WATSON, REPRESENTING THE CHICOPEE MANUFACTURING CORPORATION OF GEORGIA AND THE CHICOPEE MANUFACTURING CO. OF MASSACHUSETTS, SUBSIDIARY CORPORATIONS OF JOHNSON & JOHNSON

(The witness was duly sworn by the chairman and testified as follows:)

Mr. WATSON. I would like to correct that, Senator. I am here for the Chicopee Manufacturing Corporation of Georgia and also for the Chicopee Manufacturing Co. of Massachusetts.

The CHAIRMAN. Yes.

Mr. WATSON. These companies are allied corporations and are subsidiary companies of Johnson & Johnson.

I would like to say at the outset that I appear particularly in opposition to the production-control provision of the cotton textile code, which limits the operation of production machinery to 80 hours or less. The code provision is 80 hours.

The CHAIRMAN. You manufacture cotton goods, I take it?

Mr. WATSON. Yes, sir.

The CHAIRMAN. You are a member of the cotton textile code—your organization?

Mr. WATSON. These two companies are members of the Cotton Textile Institute. We have complied faithfully with all of the provisions of the cotton textile code—more than complied with some of them. I must say we have never assented technically to the cotton textile code, because of our opposition to the production-control provision of it.

These two mills, sir, are small mills in point of production, operating together in the two plants approximately 100,000 spindles. There are in operation in the entire cotton textile industry about 27 million spindles.

But, so you may know the basis of our objection, I would like you to know a minimum of the background of these companies. I will refer to the Georgia mill, which is the most modern mill in that section and equipment, built in 1927 at Gainesville, Ga. The mill village consists of brick houses. Schools are provided. Rentals are low, 75 cents per week per room. It is a mill that is modern in design and construction, and I want to say, particularly designed for economical operation.

The principal burden of our protest is that the code has taken from us the possibility of economical operation.

The Massachusetts mill, while not a new mill, is a modernized one, and operating and living conditions are comparable.

Prior to the adoption of the code these mills operated 130 hours per week. There was no overproduction; I mean, we always sold or used what we produced. Persons under the age of 18 years were never employed at any time. Women were never employed at night. Only white labor was employed, and the minimum wage paid was equal to the minimum wage proposed by the code first submitted by the industry to N. R. A. and I want to make the point that it was substantially higher than the average wage of the industry.

The CHAIRMAN. How about the hours of labor?

Mr. WATSON. Prior to the code the hours of labor were about from 50 to 55 hours per week. The Georgia mill operated full time by shifting—by staggering the shifts.

I would like to say there, Senator, that those long hours were made necessary by competitive conditions, We thoroughly approve of shorter hours and higher wages. Through our parent company we have participated in many codes, and we have uniformly advocated shorter hours and higher wages than has been permitted by N. R. A. We believe in that principle because we think unless the American industries employ the unemployed of the country and pay them sufficient wages in order to provide sufficient increased buying power that ruin is ahead. But we think that the fundamental principle of the Recovery Act is jeopardized and counteracted by the price-control and production-control features of many of the codes, and I speak particularly of production control in the cotton textile code. The answer to the machine and the solution of technological employment is not, in our opinion, the limitation of the use of machines, but the answer is shorter hours and higher wages. Let us give labor a larger share of what it produces. I do not want to take the committee's time discussing that. It is not the primary object which brings me here, and I will go to that.

The CHAIRMAN. That is a very novel suggestion for a manufacturer to make. We do not get it so often, you know.

Mr. WATSON. Senator Harrison, this should not be any question of good faith. Our parent company prior to the adoption of the code on which it operates, operated on a schedule of 35 cents minimum wages and 40 hours, and the code adopted by N. R. A. is 40 hours and 32½ cents.

The CHAIRMAN. You are to be commended.

Mr. WATSON. The cotton textile code reduced operations to 80 hours per week, which resulted in a large increase in our overhead and manufacturing costs. I want to give the direct figures showing the results from the operation of our Georgia mill. For that reason I will refer to these notes.

Reduced machine hours reduced our production from approximately 6,650,000 pounds per year to approximately 4,000,000 pounds per year. This increased our overhead costs, attributable solely to idle machinery and nothing else, 27 percent; to be specific, the cost of manufacturing a pound of gauze, exclusive of raw material than cotton, which is more or less increased from 15 cents to 22 cents a pound under the cotton textile code.

Of this increase of 7 cents slightly less than 3 cents was due to increased labor costs, while slightly more than 4 cents was due to higher overhead costs. The shift over would be divided by the smaller number of pounds produced.

Now, in our goods the processing tax costs about 5 cents a pound. There you have the increased overhead. Due to reducing machine hours, which is almost equal to the cotton processing tax, of which so much complaint is made, legitimately, we think, so far as the cotton processing tax goes——

The CHAIRMAN. In other words, you are not defending the processing tax?

Mr. WATSON. No; we are not defending it; no. There are other evils, of course, and this is one of them, and this is just as iniquitous.

Now, to put it in another way, in order to earn a return of 6 percent on the investment when operating 130 hours per week, a margin of profit per dollar of sales of about 10 percent, which is equivalent to a mark-up over cost of about 11 percent, is required—that is at present-day prices—while when we operate on this 80-hour schedule a margin of profit of 17 percent, which is equivalent to a mark-up of about 20 percent, is required in order to earn a 6-percent return. And we base these figures, sir, upon the average spindle investment as given by the Cotton Textile Institute. Another way of putting it is to earn this 6-percent return, operating on our former schedule, there is a profit of 3.8 cents, nearly 4 cents, whereas, in order to earn that same return operating 80 hours a week, we must make a profit of 6 cents per pound substantially more.

The effect upon prices upon machinery limitation in the cotton textile code is obvious.

The CHAIRMAN. What would you think would happen if there was no control of production in the manufacture of these textiles? Would you not soon have a tremendous surplus and it would have an unfavorable reaction?

Mr. WATSON. No, sir. We think that an adequate program of our wages would tend to control overproduction, and that the manufacturers who overproduced heretofore prior to the code was largely through exploitation of labor which caused overproduction and lower prices along, we think, with other troubles with the cotton textile code, which I will come to in a minute.

The CHAIRMAN. Is there a pretty large percent of the textile industry that has similar views to yours with reference to this control production idea?

Mr. WATSON. No, sir. The great majority of the cotton textile industry favor this experiment.

The CHAIRMAN. Yes?

Mr. WATSON. I am surprised to say, notwithstanding it is not working.

The CHAIRMAN. But your idea is that it puts a burden on the efficient industry?

Mr. WATSON. Yes, sir. We think the troubles with the cotton textile industry, just to pursue that question, Senator Harrison, are these: The complaints that are made by the industry generally fall under three heads, increased cost of cotton, the processing tax, and foreign competition, principally Japanese competition. And it is suggested that there ought to be a higher tariff, and the processing tax ought to be eliminated. Now, those are handicaps. But we think that the industry ought to set its own house in order and endeavor to operate upon an efficient basis, and within itself combat these handi-

caps as far as possible. Now, the corrections that might be made by itself, without the aid of N. R. A., or anybody else, are these:

First. This industry is a long-hour, low-wage industry, and always has been. Even under N. R. A. it stands near the bottom of the list. And the evils of that are obvious. The industry has suffered from that evil.

Second. More important, even, we think is that the industry has suffered from antiquated merchandising methods. Comparatively few units of the industry do their own merchandising. And we think it is quite as important to the successful operation of the business to merchandise properly and scientifically as it is to manufacture.

Next, there has not been modern, adequate training of the supervising personnel.

And, last, there is a great deal of antiquated equipment. More than one-third, approximately—I would withdraw the more than one-third—I will say approximately one-third of the spindles in the cotton-textile industry are more than 30 years old.

We say this system of the machinery control and production control is a burden upon the efficient manufacture, it is a hindrance upon the efficient manufacture, and it is a promotion of inefficiency, and directs business from the low-cost, more efficient plants, to the high-cost, less efficient plants.

The CHAIRMAN. Is that your only criticism of the textile code?

Mr. WATSON. Sir?

The CHAIRMAN. Is that your main criticism of the textile code?

Mr. WATSON. That is our main criticism of it.

The CHAIRMAN. Which is the control of production?

Mr. WATSON. Yes, sir. We think that the hours should be shorter and the minimum wages should be higher.

The CHAIRMAN. You do not have price fixing in this industry?

Mr. WATSON. No; there is no price fixing in the industry.

The CHAIRMAN. What is your opinion, Mr. Watson, with reference to the industry; is it in favor of a continuation of the code, or not?

Mr. WATSON. I think that the opposition to the code, or dissatisfaction with the code, is growing. I think if a vote were taken today it would be in favor of it. Frankness compels me to say that.

The CHAIRMAN. Would it be in favor of stopping the code?

Mr. WATSON. No; continuing the code.

The CHAIRMAN. Continuing the code?

Mr. WATSON. I think so. But there is a growing dissatisfaction with it. You see what has happened now, it has not worked, Senator Harrison. At first there was a bulge and general satisfaction. It was agreed to have machinery limitation, but the fact is it has not worked. Eighty hours are too many. So there have been frequent reductions to 60 hours. At the present time certain branches of the industry are operating on 60 hours a week. What happens? The minimum wage of $12 and $13 become $8 and some cents in the South and $9 in the North. Now, those wages, it seems to me, are less than subsistence wages. We think they are too high a price to pay for the dubious blessings of machine-hour restriction. If we, for instance, were freed of this burden of machine limitation, this higher overhead cost, we could work shorter hours and pay higher wages.

There is a growing dissatisfaction with it because of the fact that it is not working, because wages are less than subsistence wages.

It seems to me that any industry that looks to such a low level of wages as a cure of its troubles is looking for disaster.

The CHAIRMAN. Is it your desire to elaborate upon those suggestions any, or is that about your statement?

Mr. WATSON. There is one important point which I want to make which shows the effect of this upon a company certainly situated as we are. Since the machinery reduction provisions of this code went into effect, we have been compelled to purchase from other manufacturers in order to fill our own orders, goods to the extent of about three and a half million dollars, which we could have manufactured in our own mills for lower prices had they not been closed by reason of this provision of the code. And I would like to make one further point, and then I am through. I would like to refer to a resolution which was passed by the capital-goods industries committee of the American Society of Mechanical Engineers, who are certainly a disinterested body, and competent to speak, and after reviewing machinery control provisions of various codes, they said [reading:]

If restrictions like those presented had prevailed in American industry during the first quarter of this century, much of the industrial progress and the rise in the standard of living that came therefrom would never have been enjoyed. It is the opinion of the committee that the continuance of restrictions of this type is not in the public interest nor conducive to healthy industrial development.

And we submit that that is the situation with respect to this provision of this code.

Senator KING. I desire to read into the record at this time from a letter dated March 18 of this year, written me by the Quinn Garment Co., of Ogden, Utah. I will read a part of the communication [reading:]

Our business has been almost wrecked by our inability to fill orders, due to the short work-week and to the lack of employees. We have orders on file here since last October that we have been unable to fill to the present time. We have queered our customers and lost a most valuable volume of our business through inability to fill our orders. It cost us years of effort and heavy expense to build up this trade and now it has been lost, and we will be forced to lay off operators because of the customers we have lost through nondelivery.

We are seriously considering now moving out of the State and into some center where there is a surplus of garment workers, notwithstanding the fact that we own our own factory and would like to stay in our home State and help build up the industry here. The code was evidently made to prevent in every way possible the small employer from enlarging.

We practically can do nothing with our own business. Every part of it is supervised and inexperienced people are thrown in to run it. We find even the various agencies of the administration are not cooperating. For instance, we were advised by the State National Recovery Administration authority at three different times that the new-learner period and rates had gone into effect on September 5. We put on about six girls that we would not have hired if we had known we would have to pay them the experienced wage. Then the national inspector for the code authority comes along and compels us to pay these operators the minimum wage for experienced operators, stating that we couldn't take the local State authority's word on any matters and that the extended learner period did not go into effect until November 12.

We are subject to threat and intimidation and treated as if we were criminals for trying to create work or run a business. Women apply to us for work and we have work and are willing to train them and put them on, but we are prevented from doing so by the code, and our business is being ruined by nondelivery.

We have been prevented from putting in more machines and we could employ more people today if we were permitted by the code to put them on. We have a building prepared and would install 14 more machines if we could get the employees to put on them.

There is a further statement there about some troubles they have had with the N. R. A. authorities in the past, but they are not so material.

The committee will stand adjourned at recess until 10 o'clock tomorrow morning.

The witnesses will be Mrs. Anna Dickie Olesen, N. R. A. State Compliance Director of Minnesota, and Mr. Nathan Hamburger, of the Baltimore Cloak & Suit Association, Baltimore.

(Whereupon, at 4:47 p. m., the committee adjourned until 10 a. m., Friday, Apr. 5, 1935, at the Finance Committee room.)